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Maps.

SUPREME COURT OF THE UNITED STATES.

No. ~~182.~~ 117.

JUAN JOSÉ GONZALES' WIDOW, CLAIMANT, AND BARTLETT V. WEEKS ET AL, INTERVENORS, APP'TS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

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"San Antonio ó El Pescadero."

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1 *Order to file mandate.*

At a special term of the district court of the United States of America for the northern district of California, held at the court room in the city of San Francisco, on Saturday, the fifth day of January, in the year of our Lord one thousand eight hundred and sixty-one—

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
JUAN JOSÉ GONZALES. } D. C., 104. L. C., 336.

And now comes the claimant, Juan José Gonzales, by his counsel, H. P. Hepburn, esq., and presents the mandate of the Supreme Court of the United States, affirming the decree of this court in this cause, as more particularly appears by reference to the said mandate. Whereupon, and on motion of said claimant, by his said attorney, it is ordered that the said mandate be filed and made a part of the record of this court in this cause; and that the said claimant may proceed under said monition and under the decree of this court, as thereby affirmed, as under final decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

2 Endorsed: Filed January 5, 1861.
W. H. CHEVERS, *Clerk.*

Mandate.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the district court of the United States for the [SEAL.] northern district of California, greeting:

Whereas lately in the district court of the United States for the northern district of California, before you, in a cause between Juan José Gonzales, appellant, and the United States, appellees, the decree of the said district court was in the following words, viz:

"It is ordered, adjudged, and decreed by the court that the said decision be in all things affirmed; and it is further ordered, adjudged, and decreed by the court that the claim of the said Juan José Gonzales is a good and valid claim to the land known by the name of 'San Antonio' or 'Pescadero,' to the extent and within the boundaries mentioned in the grant and map, the original of which former, and copy of which latter, are on file in the records of this case,"

3 as by the inspection of the transcript of the record of the said district court which was brought into the Supreme Court

of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears. And whereas in the present term of December, in the year of our Lord one thousand eight hundred and fifty-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed—12 March.

You, therefore, are hereby commanded that such further proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Endorsed: Filed January 5, 1861.

W. H. CHEVERS, *Clerk.*

4 *Petition and affidavit for return of survey.*

To the honorable the judge of the district court of the United States for the northern district of California:

The petition of Samuel H. Besse and Bartlett V. Weeks respectfully represents that the said Samuel H. Besse is entitled to three undivided ninths of two-thirds, and the said Bartlett V. Weeks to two undivided ninths of two-thirds of the rancho known as the "San Antonio" or "El Pescadero," granted to Juan Gonzales by the Mexican nation in December, 1833; that the said claim has been finally confirmed and surveyed by J. W. Mandeville, surveyor general of the United States for the State of California, and on the 17th of April approved by him, and on the same day published for the first time in the "San Francisco Herald," a daily newspaper published in the city of San Francisco; that the interest, as aforesaid, of your petitioners is derived by conveyances and mesne conveyances from the children and heirs of the said Juan Gonzales, deceased.

Your petitioners object to said survey in this, that it includes in the survey only three-quarters of a league of land, whereas it should have included four leagues of land.

Your petitioners therefore pray the court for an order to be
5 addressed to the said J. W. Mandeville, surveyor general aforesaid, directing him to return the said survey into this court, to the end that the said error may be corrected.

H. P. HEPBURN,
For Petitioners.

Personally appeared Samuel H. Besse, who made oath that he has read the foregoing petition, and knows the contents thereof, and that the facts therein set forth are true.

SAM'L H. BESSE.

Subscribed and sworn to this 2d day of May, A. D. 1861, before me.

SAM'L HERMANN,
Notary Public in and for the city and county of San Francisco, State of California.

Endorsed: Filed May 7, 1861.

W. H. CHEVERS, *Clerk.*

Order to return survey.

At a stated term of the district court of the United States of America for the northern district of California, held at the court room in the city of Francisco, on Tuesday, the 7th day of May, in the year of our Lord one thousand eight hundred and sixty-one—

6 Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES } In land cases.
v. } District court, No. 104.
JUAN JOSÉ GONZALES. } Land com., " 336.

And now, at this day, on application of H. P. Hepburn, attorney for Besse and Weeks, it is ordered that the surveyor general of the United States for California return into this court, on or before Wednesday, the 29th day of May, A. D. 1861, his official survey and plat of the land finally confirmed in the above entitled cause, known as "San Antonio o El Pescadero," and situated in the county of Santa Cruz, in said district. And it is further ordered that the United States marshal for this district serve upon the said surveyor general, without delay, a certified copy of this order, and make due return hereon.

Served personally, by copy, on J. W. Mandeville, U. S. surveyor general, this 7 day of May, 1861.

WM. RABE, *U. S. Marshal,*
By J. L. BELL, *Deputy.*

Endorsed: Filed May 7, 1861.

W. H. CHEVERS, *Clerk.*

8 *Monition.*

UNITED STATES OF AMERICA,
Northern District of California, ss:

[SEAL.] The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

Whereas objection has been made to the official survey and location of the land finally confirmed, in case No. 104, to Juan José Gonzales,

known as "San Antonio o El Pescadero," and situated in the county of Santa Cruz, in said district:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the district court of the United States for said district, sitting in land cases, on or before Wednesday, the 29 day of May, A. D. 1861, at 11 o'clock a. m. (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ, do you then and there make return thereon.

9 Witness the honorable Ogden Hoffman, judge of said court, at San Francisco, in said district, this 7th day of May, A. D. 1861.

W. H. CHEVERS, *Clerk.*

The within monition was received by me on Wednesday, the 8th day of May, 1861; and in obedience thereto, I have given due notice, as therein commanded, by causing the publication of said notice for 3 consecutive Wednesdays in the San Francisco Herald, commencing on the 15th day of May, 1861, and for 2 consecutive Thursdays in the Santa Cruz Sentinel, a paper published nearest the land, commencing on the 16th day of May, 1861.

Dated San Francisco, May 29, 1861.

WM. RABÉ, *U. S. Marshal.*

Endorsed: Filed June 5, 1861.

W. H. CHEVERS, *Clerk.*

Order on return of monition.

At a stated term of the district court of the United States of America for the northern district of California, held at the court room in the city of San Francisco, on Wednesday, the fifth day of June, in the year of our Lord one thousand eight hundred and sixty-one—

Present: The honorable Ogden Hoffman, district judge.

10 THE UNITED STATES *v.* JUAN JOSÉ GONZALES. } In land cases. District court, No. 104. Land com., No. 336.

And now, at this day, the United States marshal having made return upon the monition heretofore issued in this cause that he had given due notice as therein commanded, on motion of Wm. H. Sharp, attorney for the United States, proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land finally confirmed in the above entitled cause, appear and in-

tervene for the protection of such interest. The U. S. att'y and P. della Torre, esq., appeared in behalf of the U. S.; Jeremiah Clarke, esq., appeared for Coburn and himself, and filed intervention; H. P. Hepburn appeared in behalf of the widow of Gonzales, Weeks et al; and on motion he is hereby allowed 3 days to intervene in that behalf.

No other party appearing, it is ordered that the default of all parties not appearing as aforesaid be, and the same is hereby, entered.

Endorsed: Filed June 5th, 1861.

W. H. CHEVERS, *Clerk.*

11 *Intervention of Coburn and Clarke.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
JUAN GONZALES.

Loren Coburn and Jeremiah Clarke intervene for their interest in the proceedings touching the survey returned to the court in the above entitled cause, and state and allege as follows, viz: That they are the owners of the tract of land called "Butano," confirmed by this court to Manuel Rodriguez, in case No. ——, (L. C., No. 627,) under conveyances to them from said Rodriguez of all his interest in said tract called "Butano." That said tract called "Butano" adjoins the tract confirmed to Juan Gonzales, in this cause, on the south and east; and that whatever lines are finally fixed as the boundary lines of said Gonzales's survey will become thereby the northern and western lines of the survey of the said tract called "Butano," as the same should be finally fixed.

Said Coburn and Clarke ask, therefore, to intervene in this cause, and to become parties thereto.

J. CLARKE,
For himself, and as Attorney for L. Coburn.

12 Jeremiah Clarke, whose name appears in the above statement, maketh oath that the same is true of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters he believes it to be true.

J. CLARKE.

Sworn to and subscribed June 5, 1861, before me.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed June 5, 1861.

W. H. CHEVERS, *Clerk.*

Exceptions to survey by Coburn and Clarke.

In the district court of the U. States, northern district of California.

THE UNITED STATES
v.
JUAN GONZALES. } D. C., No. 104.

Loren Coburn and Jeremiah Clarke, who intervene in the above entitled cause as owners of the adjoining tract called "Butano," confirmed to Manuel Rodriguez, except to the survey returned to the said court in said cause by the United States surveyor general for this, that whereas the title of the claimant was confirmed in said
13 cause to a tract of land having the form of rectangular parrallelogram, and having a length of one league from north to south, and a breadth of three-fourths of a league from east to west; yet that the said survey is of a tract irregular in form, having an extreme length of more than one and a half league, and a breadth varying from five-eighths of a league to one-eighth.

They insist that the eastern line of said survey should have been located parallel to the sea-shore, and at the distance of three-fourths of a league therefrom, in conformity with the grant, diseño, and decree of confirmation in said cause. Also, that the southern boundary of said survey should have been a straight line, extending from the mouth of "Butano" creek eastwardly, and at right angles to said sea-shore, and so as to conform to said grant, diseño, and decree of confirmation.

J. CLARKE.
For himself, and as Att'y for L. Coburn.

Endorsed: Filed June 12, 1861.

W. H. CHEVERS, *Clerk.*

Exceptions to survey by Besse and Weeks.

In the district court of the United States for the northern district of California.

UNITED STATES,
v.
JUAN GONZALES. } No. 104.

14 The intervenors, Samuel H. Besse and Bartlett V. Weeks, except to the survey returned into court in this case for this, to wit: that the said survey includes only three-quarters of a league of land, whereas it ought to have included four leagues of land. They aver, therefore, that the said survey is erroneous, and pray the court that the same may be disapproved, and that a new survey may be ordered, directing the surveyor general to include within the same the quantity of four leagues.

H. P. HEPBURN,
Att'y for Besse and Weeks.

Endorsed: Filed June 12, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of R. C. Hopkins.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
JUAN JOSÉ GONZALES. } In land cases, D. C., No. 104. L. C., No. 336.

Be it remembered that on this ninth day of August, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, William H. Chevers, a commissioner duly appointed by the
15 circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of claimant in the above entitled cause now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: H. P. Hepburn, in behalf of claimant; J. Clarke, for self and others; U. S. dis't att'y for U. S.

Questions in behalf of the claimant.

1. What is your name, age, residence, and occupation?

Ans. R. C. Hopkins; over 21 years of age; San Francisco; keeper of the Spanish and Mexican archives in the office of the surveyor general of the United States for California.

2. Have you examined the expediente in the case of the claim of Juan Gonzales for the rancho of San Antonio or Pescadero?

Ans. I have.

3. In whose handwriting is a note on the diseño of the said
16 expediente, and which is in the following words: "De norte a sur tiene una legua de largo y de este a veste tiene tres quartos de legua?"

Ans. It is in the handwriting of Agustin V. Zamereno, secretary of state under Figueroa at the date of the grant.

4. Have you compared the handwriting of the other parts of the diseño with that of the petition of Gonzales for the grant?

Ans. I have.

5. Are they in the same handwriting? I mean the rest of the diseño, except the note and the petition.

Ans. I think they are.

6. Is this handwriting a different handwriting from the handwriting of the note on the diseño aforesaid?

Ans. It is.

7. Have you examined the diseño in the grant of the Punta del Año Nuevo?

Ans. I have.

8. Does that diseño call for the line of Gonzales? If so, to what extent?

17 (Objected to by intervenor as proving by parol the contents of a document which speaks for itself.)

Ans. In the expediente of the Punta del Año Nuevo the diseño shows the northern boundary of the Año Nuevo to be a line drawn from the sierra to the sea, upon which line is written the words "lindero de Juan Gonzales."

9. Was the grant of Punta del Año Nuevo subsequent to the grant of Gonzales?

Ans. It was.

Cross-ex'd by Mr. Clarke.

10. What other parts of the Gonzales expediente are in the handwriting of Zamereno?

Ans. The certificate signed by Zamereno, that he had made known to the party interested the decree of the governor, is in the handwriting of Zamereno, dated 24 December, 1833.

11. What is the nominative to the verb "tiene," expressed or understood, referred to by you in your first answer in regard to the note on the expediente.

Ans. The nominative understood is "the land."

R. C. HOPKINS.

Subscribed and sworn to before me this 9th day of Aug., 1861.

W. H. CHEVERS,
U. S. Com'r.

18 Endorsed: Filed Aug. 21, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of M. Rodriguez.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* JUAN JOSÉ GONZALES. } In land cases, D. C., No. 104. L. C., No. 336.

Be it remembered that on this eleventh day of July, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, William H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil cases depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Manuel Rodriguez, a witness produced in behalf of the claimant and intervenors, Besse and Weeks, in the above entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly

sworn, testified as follows, his evidence being interpreted by A. D. Splivalo, a sworn interpreter:

19 Present: H. P. Hepburn, for intervenors, Besse and Weeks, and claimant; J. Clarke, for int's, Coburn and Clarke; and W. H. Sharp, esq., U. S. att'y.

Questions in behalf of claim't and Besse and Weeks.

1. What is your name, age, and place of residence?

Ans. My name is Manuel Rodriguez; my age is 44 years; and I reside in Santa Cruz county.

2. When did you first know the Pescadero rancho?

Ans. In 1839.

3. Who was in possession of that ranch at that time?

Ans. Juan Gonzales.

4. What number of cattle, animals, and horses did he have on the rancho at that time?

Ans. He had more than 4,000 head of cattle and between 200 and 300 horses.

5. About how many vaqueros did he have?

Ans. Four or six were always there.

6. What improvements did he have in houses, corrals, fencing, sowings, &c.?

Ans. He had an adobe house, also a frame house, near the
20 Butano. He had a large corral and a smaller one where the horses were kept and the cows milked. There were some sowings around the small frame house where the vaqueros lived.

7. How far was the adobe house and large corral from the sea?

Ans. From the adobe house to the sea-shore was about 3,000 varas, and from the adobe house to the corral was about 300 varas more.

8. How far is the small house near the Butano from the sea?

Ans. About 4,000 varas; I do not think quite so much.

9. Did the cattle and horses you have spoken of continue on the rancho till 1846 and afterwards?

Ans. In 1846 I was not there, being sick, but afterwards I was, and saw a good many cattle and horses.

10. What were the boundaries of the rancho?

(Objected to on the ground that parol evidence is substituted for documentary proof.)

Ans. To the south the Butano; to the north the boundary of Antonio Buelna, the Cañada Pompenio; to the east the mountains;
21 and to the west the sea.

11. What was the extent of the occupation by *the occupation by* the cattle and horses?

Ans. Everywhere within the boundaries I have described.

12. Within three-quarters of a league from the sea, between the Butano and the Pompenio, what sort of pasture land is it?

Ans. It is not very good; it is the worst of the ranch.

13. How many head of cattle would the tract so described support?

Ans. If this tract was fenced, so that cattle could not get out, according to my best knowledge 500 head would fare very badly.

14. Was the whole of the land enclosed in the boundaries you have described necessary for the support of the cattle and horses thereon when you knew it?

Ans. It was.

15. During all the time that you have known this rancho, was it exclusively occupied by the cattle of Gonzales?

Ans. It was.

Cross-examination.

22 16. How recently have you been over the Pescadero rancho?

Ans. I was there about two months ago. I passed through the tract from north to south by the present travelled road.

17. On which side of that road do you think a line would be drawn parallel with the ocean at the distance of three-fourths of a league?

Ans. I could not say, as the road is very crooked.

18. You have stated that the land lying to the west of this line is the poorest part of the tract; how far to the easterly of this line does the land continue to improve in quality?

Ans. From a deep cañada, which goes towards to Pompenio from a store near the Pescadero, to the east is the best grazing land.

19. About how far is it from the ocean to the top of the mountains across this tract?

Ans. I have never measured it, but I think it is three leagues to the top of mountains?

20. Does it continue to be good pasture land all the way to the top of the mountains?

Ans. It is generally good.

23 21. At the time you first knew the Pescadero tract, in 1839, what was understood to be the northern boundary of the rancho called Punta del Año Nuevo, and by whom was the rancho then occupied?

Ans. I do not exactly remember who occupied it, but my best recollection is that it was Eugenio Soto. The northern boundary was known to be the Arroyo Garzas.

22. About what is the distance from the Butano creek to the Arroyo Garzas?

Ans. I do not know.

23. Does the Garzas creek, where it empties into the sea, lie to the north or south of the point known as "Pigeon Point," Storehouse Rock, or Punta del Ballena, and how far from that point?

Ans. It lies to the south, about 1,000 varas, more or less.

Direct examination resumed.

24. Are not the grasses salt and inferior near the sea-shore, and do they not gradually improve towards the mountains?

Ans. They are salt and inferior, and improve as you go up towards the mountains.

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Cross-examination resumed.

24 25. Is not the whole shore, from the mouth of the Pompenio to near the mouth of the Butano, a perpendicular cliff of rock from 80 to 100 feet high?

Ans. It is in some places, but not so throughout, and the height is not so much.

Direct examination resumed.

26. What proportion of his time did Gonzales pass upon his ranch?

Ans. From one-third to one-half of his time. He never failed to be there Saturdays to give his orders to the vaqueros.

27. Was there danger from Indians in that neighborhood before the Americans came?

Ans. Yes; very much danger.

M. RODRIGUEZ.

Sworn to and subscribed, July, 1861, before me.

W. H. CHEVERS,
U. S. Comm'r.

Endorsed: Filed Aug. 21, 1861.

W. H. CHEVERS, *Clerk.*

25 *Deposition of C. Perez.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
JUAN JOSÉ GONZALES. } In land cases, D. C., No. 104. L. C., No. 336.

Be it remembered that on this eleventh day of July, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Cornelio Perez, a witness produced in behalf of the claimant and intervenors Besse and Weeks, in the above entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by A. D. Splivalo, a sworn interpreter.

Present: H. P. Hepburn, for Besse and Weeks and claim't; J. Clarke, esq., for Coburn and Clarke; and W. H. Sharp, esq., U. S. att'y, for U. S.

Questions in behalf of claim't and Besse and Weeks.

26 1. What is your name, age, and place of residence?

Ans. My name is Cornelio Perez; my age is 52 years; and I reside in Santa Cruz county.

2. Did you know Juan Gonzalez in his lifetime?

Ans. I did.

3. Do you know when he first went on to the rancho of Pescadero or San Antonio?

Ans. I don't remember when he went to live there with his family, but I remember when he started the ranch, which, I believe, was in the year 1830 or 1831; at that time he began to stock it with cattle.

4. How many animals did he put on it when he founded the ranch?

Ans. More than 700 head of cattle.

5. How long did Gonzalez live there?

Ans. The year that he started the ranch with cattle he had servants to live there, but at that time he did not stay there continually himself, because his family staid in another place.

6. When did he and his family go to live permanently on the ranch?

27 Ans. I do not remember in what year. I do not remember whether it was in 1850 or 1851.

7. What houses or improvements did Gonzales put on his ranch, and when?

Ans. He had an adobe house and another frame house at the crossing of Butano. The adobe house was built the year after the foundation of the ranch, and near the Pescadero creek. The vaqueros made a corral near the frame house, and there milked the cows; they also had sowings around that place.

(Counsel for claim't and Besse and Weeks now offers map, marked "Exhibit A," of the Rancho Pescadero, surveyed by Chas. T. Healy and S. W. Smith.)

(Counsel for interveners, Coburn and Clark, objects to the introduction of the exhibit, first, on the ground that the assumed surveyor should have been examined at the time of introducing the exhibit; and second, because the exhibit is not the plat of an actual survey, but merely a fancy sketch.)

8. Look upon the map now shown you, marked "Exhibit A," and point out, if you can, where the adobe house and frame house, put up by Gonzales, are situated?

(Question withdrawn.)

28 9. How far, in your judgment, is the adobe house from the sea?

Ans. I don't know.

10. Is it a league?

Ans. I don't know.

11. How far, in your judgment, is the house on the Butano pass from the sea?

Ans. I don't know.

12. Can you state whether it is a league or a half?

Ans. I believe not.

13. You have stated that when Gonzales founded his ranch he put 700 head of cattle on it; have you any personal knowledge of this fact?

Ans. Yes, because I helped to drive in the cattle.

14. In 1846, or about that time, how many head of cattle had Gonzales on that ranch?

Ans. I do not remember exactly how many cattle he had there in 1846, but in 1840 they were estimated at 4,000; the greater number that were driven into the corral were counted, but those on the hills were estimated.

29 15. Did these cattle, which were thus counted and estimated in 1840, with their increase, remain there until 1846?

(Objected to because it is leading, and the witness has already stated that he did not know the number of cattle in 1846.)

Ans. I do not know whether in 1846 he had more or less than in 1840, because a good many were butchered every year.

16. Were the cattle of Gonzales always on the rancho, more or less, from 1831 till Gonzales died?

Ans. The cattle were always there. I do not know the quantity, but the cattle remained on the ranch until they were finished.

17. Can you say, more or less, estimating by hundreds or thousands, how many cattle were on the ranch in 1846?

Ans. I cannot say whether there were 4,000, either more or less; for, as I said before, he killed a good many every year; however, the quantity then remaining was very considerable.

18. Were you in the habit of visiting Gonzales on this ranch during the period between the years 1831 and 1846?

Ans. I was.

30 19. State what were the boundaries of this ranch, and the limits of the occupation by the cattle.

(Objected to as attempting to prove by parol boundaries which are already proved by documentary proof.)

Ans. The boundaries, as they were then recognised, were from the Arroyo Butano to the Cañada of Pompenio, *Colindaute*, with Antonio Buelna, and from the sea to the Sierra. These were also the limits of the occupation by the cattle and horses; of which latter he had about 300 head.

20. You have stated that you assisted in putting the cattle on the rancho in 1831 when it was founded; state where they occupied at that time.

Ans. They were left free on the rancho Pescadero, where they grazed; and also along Butano creek.

21. Did not the cattle and horses range from the beginning over the entire ranch within the limits described by you?

Ans. Yes; they did. I know this, because I very often went to keep them when they gave *rodeos* to gather the cattle which were spread all over the ranch, from the sea-shore to the mountains.

31 22. How many corrals had Gonzales on this ranch?

Ans. He had two—a large one and a smaller one.

23. On what part of the rancho was the large corral?

Ans. The large corral was near the adobe house, which was near the Pescadero creek?

24. On what part of the rancho was the small corral?

Ans. It was near the Butano, crossing where his servants milked the tame cows.

25. In what direction from the adobe house was the large corral; was it towards the sea or hills?

Ans. It was towards the hills. The large corral was where the cattle were shut in to be branded.

26. What sort of grazing land is the land bordering on the sea between the Butano and the Pompenio, running back three-quarters of a league?

Ans. It was good pasturage for cattle, because they also ate the brush.

32 27. Is that tract better or worse than the rest of the rancho towards the hill for grazing purposes?

Ans. It is all good grazing land from the sea to the mountains.

28. Do you know of your own knowledge whether Gonzales cut timber on this ranch at any time? If so, state when, where, and for what purpose.

Ans. He did cut some timber; the first he cut was up the Butano creek, in the mountain, for building his house when he founded the ranch. He also cut some for fences, corrals, and everything needed on the ranch.

Cross-examination.

29. How did Gonzales draw the timber down the creek; was it by dragging or hauling it down on a waggon?

Ans. He dragged it with oxen; wagons could not go up where the timber was cut.

30. Has there continued to be a trail there ever since?

Ans. I do not know.

33 31. On which side of the Butano was the trail down which he drew the timber?

Ans. He searched for a better road, sometimes crossing over and back again.

32. On which side of the creek did Gonzales cut the timber?

Ans. On both sides.

33. What was the distance, as near as you can estimate, from the place where he cut the timber to the sea?

Ans. I do not know.

34. Was it four leagues?

Ans. I do not know.

35. Then, for anything you know, it might be more than four leagues?

Ans. I do not know whether it is one league, half a league, or what was its distance.

36. Do you wish to be understood as stating, upon your oath, that you don't know that it was more than half a league?

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Ans. I do not know. I cannot say whether it was one league, either more or less.

34 37. Can you state how far it was above Gonzales' farm house.

Ans. I cannot.

38. Were you frequently present at the *rodeos* that Gonzales gave?

Ans. Yes; I was frequently present; for very often when he could not attend himself, and I was in my house, he would employ me to go there and act as his mayor domo.

39. State what neighboring rancheros were present at those rodeos at different times?

Ans. The only neighboring rancheros during the first years were José Antonio Galindo and Antonio Buelna. They came to the rodeos very seldom, and only when cattle were branded. Most of the time they were away from their ranchos. The Galindo, of whom I speak, is the son of Romana Sanchez.

40. State if, upon the occasion of those rodeos, there would be found mixed with the cattle of the person holding the rodeo also the cattle of the neighboring rancheros.

Ans. Yes; sometimes cattle of these neighboring rancheros
35 would be found mixed with Gonzales' cattle, but this very seldom; and the greater quantity belonging to Antonio Buelna, because Gonzales would never allow the cattle of Galindo to cross the Rutano to his rancho.

41. Did Antonio Buelna ever have rodeos on his ranch?

Ans. Yes.

42. Would he ever find any of Gonzales' cattle with his, and separate them?

Ans. Whenever Gonzales wanted to brand his cattle, he would ask Buelna to give a rodeo, and then we would go over and bring the cattle belonging to Gonzales.

43. How far, in the direction of Buelna's rancho, from Gonzales' corral would Gonzales' cattle sometimes stray?

Ans. I cannot say how far; they sometimes strayed over and mixed with Buelna's cattle.

44. In those days were there any fences between adjoining ranchos to prevent cattle straying as they pleased?

Ans. There were not.

36 45. How far did Buelna's tract extend from the sea, eastwardly, to the top of the mountains?

Ans. I don't know.

46. Have you ever been to the top of the mountains, opposite Gonzales' and Buelna's ranchos?

Ans. I have been everywhere in those mountains.

47. State, according to the best of your opinion, the distance from the top of those mountains to the sea?

Ans. I do not know.

48. Have you any opinion about the distance?

Ans. My opinion is that it may be one league, more of less.

49. Do you think it is more than a league?

Ans. I have said that I do not know whether it is one league, more or less.

50. Was there any adjoining ranch owner to the east of Gonzales?

Answer. I never knew of any.

37 51. At the time when Gonzales founded this ranch, whose cattle pastured between it and the present town of Santa Cruz?

Ans. It was the cattle belonging to the mission of Santa Cruz.

52. Where was the point nearest to Gonzales that there was a corral or houses for the vaqueros of the cattle of the mission of Santa Cruz?

Ans. At the Punta del Año Nuevo was the nearest place where the vaqueros from Santa Cruz had a corral and house.

Direct examination resumed.

53. Before Gonzales went to live on the ranch with his family, was he often there himself, and did he have vaqueros there?

Ans. He used to go there very often, and always had vaqueros living there.

Cross-examination resumed.

54. Was the house and corral of Galindo near the Butano creek?

Ans. He had a small house there.

his
CORNELIO + PEREZ.
mark.

Sworn to and subscribed, July 11, 1861, before me.

38 W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed Aug. 21, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of S. W. Smith.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
JUAN JOSÉ GONZALES. } In land cases, D. C., No. 104. L. C., No. 336.

Be it remembered that on this 20th day of July, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared S. Worsly Smith, a witness produced in behalf of the claimant, and in-

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tervenors Besse and Weeks, in the above entitled cause, now pending in said court, under the acts of Congress to ascertain and
39 settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: H. P. Hepburn, esq., for intervenors, Besse & Weeks, and claimant; J. Clarke, esq., for Coburn & Clarke; W. H. Sharp, esq., U. S. att'y, for the U. S.

Questions in behalf of clai't & Besse & Weeks.

1. What is your name, age, place of residence, and occupation?

Ans. My name is S. Worsley Smith; my name is 24 years; I reside in the city of San José, and am a surveyor by occupation.

2. Who made the survey of the Rancho Pescadero?

Ans. I did.

3. Look on the map marked "Exhibit A," and state who made it.

Ans. I made it.

4. What does that map delineate?

Ans. It delineates the topography of the country known as the Pescadero rancho.

5. What are the boundaries of that ranch, according to this map?

Ans. It is bounded on the north by the Pomponio creek;
40 on the south by the Butano creek; on the east by a range of mountains; and on the west by the Pacific ocean.

6. Have you a personal knowledge of the tract contained within these boundaries?

Ans. I have.

7. About how many leagues are contained within those boundaries?

Ans. Between three and four leagues.

8. Do you know the locality of the adobe house, or the remains of an adobe house, on that tract, built by Gonzales? If so, state whether that adobe house or its remains falls within or without the boundary lines of the official survey made by you.

Ans. I know the locality of the foundation of the old house of Gonzales, and the same lies without the boundaries of the ranch as surveyed by me.

9. What distance outside?

Ans. About a quarter of a mile.

10. Are the limits of the official survey made by you indicated on the map marked Exhibit "A?"

41 Ans. Yes, sir; they are.

11. When you say the adobe house is a quarter of a mile outside of the official survey, in what direction does it lay?

Ans. It lies a quarter of a mile east of the eastern line.

12. Is the foundation of the adobe house indicated on "Exhibit A?" If so, is it properly located thereon?

Ans. It is located on "Exhibit A," and properly so.

13. At whose request, and for whom, did you make the official survey?

Ans. I made it under the direction from Mr. Healy, as his compass-man.

14. Do you know, of your personal knowledge, whether the natural objects and the topography of the country purported to be delineated on the map marked Exhibit A are truly delineated?

Ans. I do know that it is.

(Counsel for claimant and Besse & Weeks offers in evidence the map marked "Exhibit A," to be annexed to this deposition.)

42 *Cross-examination.*

15. Was Mr. Healey present at the time of making this survey?

Ans. He was not.

16. How long were you engaged in making it on the ground?

Ans. I was four days in actual survey upon the ground.

17. Were you ever in that part of the country before or since the making of this survey?

Ans. I was not.

18. Which of the lines upon "Exhibit A" did you actually run with chain and compass?

Ans. The line corresponding with course 25 on the official survey, and extending from the Pomponio creek northeastwardly to the most northern point of the plat, is the only line shown on "Exhibit A" that I actually ran with the compass and chain. The closing line which I ran is not shown upon this map, because it took in too much land. The line as shown I made by calculation.

43 19. With what was that line to close?

Ans. That line closed with the line of the Butano ranch, on the Butano creek, as the said line of the Butano ranch had been previously surveyed by a U. S. deputy surveyor; also the shore line of the Pacific ocean; also the line of the Rancho San Gregorio, on the Pomponio creek; and as the surveyor general had given us instructions not to retrace any of those lines, I had only the closing line to run between the San Gregorio and the Butano ranchos. The field notes of the shore line of the Pacific were given me by the surveyor general, as having been run by C. C. Tracy, U. S. deputy surveyor, in making public surveys, and also the connection of that line with the Butano and San Gregorio ranchos.

20. What was the area included within the closing line, as actually run by you, and the other lines of the tract?

Ans. I don't recollect exactly, but I think it was about 3,600 acres.

21. What was the distance from the point where said closing line, as actually run, struck the Butano creek, and the point where the line as returned upon the plat strikes said creek?

44 Ans. About ten chains.

22. Did you take the bearings of the foundation of the old adobe house of Gonzales, so as to precisely fix its location upon the plat and exhibit?

Ans. When I ran the closing line I noticed the distance when I got to the west of the house, but did not take its bearings by compass, or measure the distance.

23. Did you take the bearings of the "post office" represented on the exhibit, or measure the distance?

Ans. I did not.

24. Has not the "post office" been delineated on said map from your memory and general impression?

Ans. It was not. I took it from surveys made by the county surveyor of Santa Cruz county.

25. Did you note in your field-notes the distance at which your closing line ran across the Pescadero creek?

Ans. I did.

26. State whether the closing line, as returned, crosses the creek at the same distance.

Ans. I think not.

27. From what data, then, was the Pescadero creek laid down upon this exhibit?

Ans. Partly from the general direction of the creek, taken with the compass when I crossed it, and partly from memory.

28. Do you not know that the post office stands upon the very bank of the creek?

Ans. I do not.

29. How far is the "post office" from the Pescadero creek, as shown upon this exhibit?

Ans. It is about half a mile.

30. Did you take the direction of the Pescadero creek at any other point than at the crossing referred to?

Ans. I took the direction at one other point above. The creek has never been actually surveyed, so far as I know.

31. State whether the Butano creek is represented according to any actual survey, or according to your impression, of its direction; I mean above your connecting line.

Ans. Its general direction is partly from surveys and partly from my own judgment.

32. How far is it from the eastern portion of the tract represented by "Exhibit A" to the summit of the mountains?

Ans. I never measured it; I should judge it to be between four and five miles.

33. Have the mountains in that region any distinct line of base, or does the mountain side continue to descend all the way from the summit to the ocean?

Ans. It has no very distinct base. It is cut up by cañons and lines, and upon the north side the mountains generally extend nearly, if not quite, to the ocean. As a general thing, on the rest of the ranch they do not.

34. If the eastern line of the "Exhibit A" does not represent the summit of the mountains nor the base of the mountains, and has been drawn to cut off any specified quantity of land, is it not a purely arbitrary line with reference to this tract?

Ans. The eastern line was intended to represent a corresponding line on the diseño.

47 35. Does the land on this tract descend gradually to the shore, or does it terminate in an abrupt and high rocky bluff?

Ans. In sóme places there are rocky bluffs; in some places low sand hills. The general configuration of the country is a high bluff, varying from twenty to seventy-five and one hundred feet in height. The sand hills extend about half a mile from the Butano creek; the rest is a high rocky bluff.

36. What is the length of the eastern line, as shown on the plat returned in this case?

Ans. It is one league and seven-tenths.

37. What is the greatest breadth of the land, as shown on the plat?

Ans. Three-fifths of a league.

38. If the tract had been surveyed one league in length and of the breadth of three-fourths of a league, or such breadth as would have included three-fourths of a league in area, would it not necessarily have included the old adobe house of Gonzales?

Ans. In a rectangular from, it would.

48 *Direct examination resumed.*

39. If a rectangular form had been adopted, could both of the boundaries, to wit, the Butano and the Pomponio, have been reached?

Ans. They could not; it could have reached them, but not followed them.

40. How do the grasses within the limits of the official survey compare with the grasses further east?

Ans. They are inferior.

41. Does the pasturage run back to the summit of the mountains?

Ans. It does.

S. WORSLEY SMITH.

Sworn to and subscribed this 20th day of July, A. D. 1861.

W. H. CHEVERS,
U. S. Comm'r.

Endorsed: Filed Aug. 21, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows map marked page 49.)

51 *Deed from J. Gonzales to M. Alzina.*

JUAN GONZALES TO MARIA C. ALZINA.

Conste por este que yo Juan Gonzales del condado de Santa Cru. California, por y consideration del amor, y cariño fraternal que teng para mi hermana Maria Carlota Muger de Francisco Alzina he dad y concedido y por estar presentes doy, y concedo, enageno y hasi á la dicha Maria Carlota y á sus herederos y asignatorios todo el derecho y interes que tengo en un pedazo de terreno siendo ello parte de mi rancho de San Antonio situado en el condado de Santa Cruz, en la

costa en la costa y mar ariba del Rancho de la Punta del Año nuevo y de extencion de dos ciento acres mas ó menos, dicho paraje conocido como el Rodeo Viejo colindando con el Arroyo del Pescadero el plan de lo cual se ha de hacer el agrimenso del condado bajo mi direccion, Cidisudo á la dicha Maria Carlota todo, derecho y interes que tengo en dicho pedazo de terreno y su los frutor gananciar y rentar de ello. Para que ella y sus herederos y signatorios lo tenga para su sola, y absoluto uso y beneficio para siempre de modo de que ni yo, ni mir hijos ni ninguno puede reclamarlo en lo futuro. Y para que
52 conste doy este en Santa Cruz el dia quince de Setiembre de 1852, bajo mi firma y sello. La palabra "Pescadera" que antes decio se borro. La palabra "San Antonio" vale.

JUAN GONZALES. [SEAL.]

Testigo: PETER TRACY.

STATE OF CALIFORNIA, *County of Santa Cruz:*

On this sixteenth day of September, A. D. 1852, before me, Peter Tracy, county clerk in and for said count, personally came Juan Gonzales, to me known to be the person described in and who executed the foregoing instrument, and who acknowledged that he executed the same freely, and for the use and purposes therein mentioned.

[SEAL.] Witness my hand and seal of office the day and year above written.

PETER TRACY, *Clerk.*

Filed for record Sept. 10, 1852, at 6 o'clock, p. m.

Attest: PETER TRACY, *Recorder.*

STATE OF CALIFORNIA, *County of Santa Cruz:*

I, D. J. Haslam, co. recorder of Santa Cruz co, do hereby certify that the forgoing pages, 1 & 2 inclusive, is a full, true, and correct copy of an instrument now on record in my office in vol. 1 of Deeds, page 421.

53 [SEAL.] Witness my hand and official seal, this 14th day of May, A. D. 1861.

D. J. HASLAM, *Co. Recorder.*

Endorsed: Filed August 27, 1861.

W. H. CHEVERS, *Clerk.*

Deed from J. Gonzales to F. & L. Gonzales.

JUAN GONZALES TO FELIPE AND LUIS GONZALES.

Conste per este que, yo Juan Gonzales por y en consideracion del amistad y amor fraternal, que tengo para con mis hermanos Felipe Gonzales y Louis Ganzales he dado, pasado y cedo, a, los dichos Felipe Gonzales y Louis Gonzales y á sus herederos para siempre un pedazo de terreno siendo parte de mi Rancho conocido con el nombre del Rancho de San Antonio ó Pescadera, situado en condado de Santa Cruz, California, y de extencion que sigue principiando el la esquina

de Moore por el sur oueste á la laguna de ahi sigundo la Cañada á la otra laguna y pasando por el medio de dicho laguna de ahi por el sur hasta llegar el punto donde el camino pasa, el arroyito del Bretaño, al sur de ahi siguiendo este arroyo hasta su nacimiento y he ahi sigundo las lomas hasta a la esquina de Moore por el
54 sur este y de ahi al punto en que principio este descripcion. La parte de arriba para Luis y parte de abajo para Felipe. Para que lo tengan ellos y sus herederos para siempre de modo de que pueden reclamar. Y para que conste lo he firmado en Santa Cruz este 30 de Setiembre de 1852.

JUAN GONZALES.

Testigos: F. ALZINA,
H. F. PARSONS.

STATE OF CALIFORNIA, *County of Santa Cruz:*

Before me, Peter Tracy, county clerk in and for said county, personally came Francisco Alzina, known to me to be the person whose name is subscribed to the foregoing instrument as a witness thereto, who, being duly sworn, deposes and says that he was present at and witness to the execution of said instrument, and that Juan Gonzales, who name is subscribed to said instrument as party thereto, is the person who executed the same, and that he executed the same freely and voluntarily and for the uses and purposes therein mentioned, and that he, the said Alzina, subscribed his name to said instrument as a witness thereto.

F. ALZINA.

Sworn to and subscribed before me, the 22nd day of October,
55 A. D. 1852. Witness my hand and official seal the day and year last above written.

[SEAL.] PETER TRACY, *Clerk.*

Filed for record Oct. 22nd, 1852.

PETER TRACEY, *Recorder.*

STATE OF CALIFORNIA, *County of Santa Cruz:*

I, D. J. Hastam, co. recorder of Santa Cruz co., do hereby certify that the foregoing is a full, true and correct copy of an instrument of record in my office in vol. 1 of Deeds, page 463.

Witness my hand and official seal, this 14th day of May,
[SEAL.] A. D. 1861.

D. J. HASTAM, *Co. Recorder.*

Endorsed: Filed Aug. 27, 1861.

W. H. CHEVERS, *Clerk.*

56 *Translation of deed from J. Gonzales to M. Alziva.*

JUAN GONZALES TO MARIA C. ALZINA.

Know all men by these presents that I, Juan Gonzales, of the county of Santa Cruz, California, for and in consideration of my fra-

teral love and affection towards my sister, Maria Carlota, wife of Francisco Alzina, have given and ceded, and by these presents do give, and cede, and convey, and transfer to the said Maria Carlota, her heirs and assigns, all my right and interest in a piece of ground which is part of my rancho de "*San Antonio*," in the county of Santa Cruz, towards the coast and above the rancho "de la Punta del Año Nuevo," and being in extent two hundred acres, more or less, said place being known as "El Rodeo Viejo;" bounded by the "Arroya del Pescadero," the survey of the same to be done by the county surveyor under my direction. Ceding to the said Maria Carlota all my right and interest in said piece of ground, together with the fruits, profits, and rents of the same. That she and her heirs and assigns may have it for their absolute use and benefit forever, so that neither I, nor my children, nor anybody, may claim it in the future.

In witness whereof I sign this in Santa Cruz, the 15th day of September, 1852, with my hand and seal. The word "Pescadero"
57 that before was taken out, and in its place was written the word "San Antonio."

JUAN GONZALES. [SEAL.]

Witness : PETER TRACY.

Translation of deed from J. Gonzales to F. & L. Gonzales.

JUAN GONZALES TO FELIPE AND LOUIS GONZALES.

Know all men by these presents that I, Juan Gonzales, for and in consideration of friendship and fraternal love that I bear towards my brothers, Felipe Gonzales and Louis Gonzales, have given, transferred, and by these presents I cede, to the said Felipe Gonzales and Louis Gonzales, and their heirs forever, a piece of ground, which is part of my rancho known by the name of "Rancho de San Antonio," or "Pescadero," situate in the county of Santa Cruz, California, being in extent and beginning at the corner of Moore, towards the southwest, to the lagoon; thence following the cañada to the other lagoon, and passing through the middle of said lagoon; thence towards the south to a point where the road intercepts the "Arroyo del Butano;" thence towards the south, following the said arroyo, to its head; thence following the hills to the corner of Moore towards the
58 southeast; and thence to the point of beginning—the upper part for Louis and the lower part for Felipe; so that they and their heirs may have it and that they may claim it.

In witness whereof I signed this in the county of Santa Cruz the 30 of September, 1852.

JUAN GONZALES.

Witnesses :
F. ALZINA.
H. F. PARSONS.

Deed of J. Gonzales and wife to Eli Moore.

This indenture, made the fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-two, between Juan Gonzales and Marie Ann, his wife, of the county of Santa Cruz and State of California, of the first part, and Eli Moore, of the same county and State, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of six thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth bargain and sell and confirm, unto the said party of the second part, and to his heirs and
59 assigns forever, all and each of their right and title in and to the following described land, situated in the aforesaid county of Santa Cruz, and being a part of that certain tract of land known as the Rancho San Antonio, on which the said Gonzales now lives, more particularly described as follows, to wit: Commencing at an oak tree marked on the south side, and leaning to the westward, which stands on the point of the hill west of the first arroyo which comes from the mountains, eastward of the said Gonzales' house; thence by true meridian, magnetic variation, north, $14\frac{1}{2}°$ east, south 37° 45′ west, 37.40 chains, (66 feet = one chain;) thence south, 37° 15′ east, 17.50 chains; thence south, 13° 15′ east, 24.03 chains; thence south 23° east, 13.30 chains; thence south, 21° 30′ east, 5.50 chains; thence south 29° 30′ west, 3.55 chains; thence south 58° 15′ west, 7.05 chains; thence south 34° 45′ east, 2.81 chains; thence north 42° 45′ east, 2.50 chains; thence north 67° east, 4.50 chains; thence south 78° 15′ east, 2.67 chains; thence south 44° east, 3.50 chains; thence south 48° 15′ east, 17.65 chains; thence east 80 chains; thence from station one, or place of beginning, south, 76° 15 east, 52.50 chains, to a small blazed fir tree; thence to point of intersection of line from station 14, containing about eight hundred acres, together
60 with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, and interest, and dower, and right of dower, property, possession, claim, and demand whatever, as well in law as in equity, of the said parties of the first part, of, in, and to the above described premises, and every and parcel thereof, to have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JUAN GONZALES. [SEAL.]

her
MARIE ANN + GONZALES, [SEAL.]
mark.

Signed, sealed, and delivered, in presence of—

T. W. WRIGHT.

F. ALZINA.

(Here follows map marked page 60.)

COUNTY OF SANTA CRUZ, *State of California:*

61 On this the fifteenth day of September, A. D. 1852, before me, Peter Tracy, clerk and ex-officio recorder of the county aforesaid, personally came Juan Gonzales and Marie Ann, his wife, known to me to be the persons who executed the above conveyance, and acknowledged that they executed the same freely and voluntarily; and the said Marie Ann, on a private examination made by me apart from her husband, acknowledged that she executed the same freely and voluntarily, without fear or compulsion of him.

In testimony whereof I have hereunto set my hand and affixed the seal of my office the day and year last above written.

[SEAL.]

PETER TRACY,
Clerk and ex officio Recorder.
By T. W. WRIGHT, *Deputy.*

Filed for record September 16, at 7 o'clock a. m., A. D. 1852.
PETER TRACY, *Recorder.*

STATE OF CAL'A, *County of Santa Cruz, ss:*

I, D. J. Haslam, county clerk of Santa Cruz county, State of California, and *ex officio* county recorder thereof, do hereby certify that the foregoing pages 1, 2, 3, and 4, and map marked "A," is
62 a full, true, and correct copy of an instrument now of record in my office, in vol. 1 of Deeds, pages 417, 418, 419.

Witness my hand and official seal, this 23d day of March, A. D. 1861.
[SEAL.]

D. J. HASLAM,
Co. Recorder Santa Cruz county.

Endorsed: Filed Aug. 27, 1861.
W. H. CHEVERS, *Clerk.*

63 *Notes of testimony of U. S. D. Judge.*

U. S. Dist. Court, Nor. Dist. Cal.

UNITED STATES
v.
JUAN JOSÉ GONZALES.

Clarke for intervenors. The owners of the Butano rancho confirmed to Manuel Rodrigues.

The decree confirmed ¾ of a league, and this decree was confirmed by the Supreme Court.

The survey is of the right quantity, but it is about a league and a half in length, and narrow in proportion; whereas all the decrees and documents show it to be one league in length and ¾ of a league in width.

The quantity is specified in the 4 condition, and the sobrante reserved.

Inscription on the diseño proved to be in handwriting of Zamorano.

This was a Figueroa grant, which were all small grants.

Assuming that the quantity is to be limited to ¾ of a league, what is to be its form?

The form of the official survey does not correspond with any description in the grant or decree.

(N. B.—The question is, did the government intend to grant
64 the land between the Butano and San Gregorio rancho, which is about the length specified, and then run up the Butano?)

Hepburn: 2 cases have been decided as to quantity, Rosa Pacheco's case and Yont's case.

If the back line of the survey is maintained, it will exclude his house and improvements.

Della Torre, for U. S.: I contend that one-half of what is claimed should be granted to each of the opposing parties.

The only interest Mr. Clarke has is to have the Gonzales survey so made as to leave land to the north of the Butano for the Rodrigues grant.

But in no event can the Rodrigues grant cross the Butano.

1. The Butano in the Gonzales case is the southern creek.

2. The testimony in the case of Rodrigues fixes his northern boundary at the Butano.

3. And the grant fixes it in the same way.

1. Map of 1838 in Rodriguez expediente.

The petition in the case only asks for ¾ of a league. There is no claim in the case for more.

N. B.—Petition amended on appeal Aug. 27, 1861.

65 *Opinion.*

U. S. Dist. Court, Nor. Dist. Cal.

UNITED STATES
v.
JUAN JOSÉ GONZALES. } Objections to survey.

Exceptions to this survey in this case have been filed by the claimants and by certain parties intervening for their interest.

It is contended by the claimant that the original grant was for a certain tract within specified boundaries, and that the whole quantity (about 4 leagues) included within those boundaries should be surveyed to the claimant.

The history of the grant, as disclosed by the expediente, is as follows:

On the 26th Nov., 1833, Juan José Gonzales petitioned the governor for the rancho of "San Antonio or El Pescadero Realengo, including a square of about four leagues, extending from the rancho of San

Gregorio, occupied by citizen Antonio Buelna, to the rancho of Punta del Año Nueva, and from the coast to the sierra."

This petition was referred by the governor to the alcalde of the capital, with directions to examine witnesses as to the qualifications of the petitioner and the nature and extent of the land.

66 By the alcalde's report, it appears that three witnesses appeared before him.

The first deposed that the "land was from a league to a league and a half from east to west, but its length from north to south he was unacquainted with, as it was a cañon which extended to the rancho of Antonio Buelna."

The second witness testified that the land was a league or more wide, *i. e.*, from north to south, and 2 leagues from the beach to the hills.

The third witness was unacquainted with the extent of the tract.

On this information the governor made, on the 17 December, 1833, his decree of concession, by which he declared Gonzales the owner in fee of "the land known by the name of San Antonio or El Pescadero, bounded by the rancho of Antonio Buelna, the sierra, the coast and the arroyo del Butano."

On the 24th December the final title was issued. In this document the land granted is described precisely as in the decree of concession, but the 4th condition declares the land of which donation is made to be "one league in length and three-quarters of a league in breadth, a little more or less, as shown by the map which goes with the expediente."

67 The motive of the governor in thus reducing, by more than one-half, the quantity of land granted is not very apparent.

The report of the alcalde had apprised him that the width of the tract from the sierra to the beach was from one and a half to two leagues. He had, by his decree of concession, granted the tract with the boundaries mentioned in the petition, and if he had determined not to grant all *all* the land within those boundaries, and of the extent of which he was apprised, it would seem more natural to have so stated in his decree of concession and in the granting clause of the title.

On the diseño found in the expediente there appears an unsigned note or mem., in which it is stated that the land is a league in length, by three-quarters of a league in breadth. This note has been shown to be in the handwriting of Zamorano, the governor's secretary, and to be written in a handwriting different from that of the petition and other parts of the diseño submitted by the claimant. The statement contained in it, if it was intended to apply to the land solicited or delineated on the diseño, is obviously inaccurate, for the petition asks for 4 leagues, and the testimony of the witnesses

68 had shown the land to be from 1½ to 2 leagues broad.

The surveys by the U. S. show that the land included within the diseño is at least twice as wide as supposed by Zamorano.

Under these circumstances a question naturally arises as to the intention of the governor. Did he, when stating the length of the

tract to be one league, and its breadth ¾ of a league, mean to restrict the grantee to that precise quantity, and, in effect, give him less than one-half of the tract solicited and contained within the boundaries; or did the governor intend, as his decree of concession and the granting clause of the title declare, to give him the whole land within the boundaries; but overlooking the testimony of the witnesses before the alcalde, and incautiously adopting the erroneous estimate of quantity contained in Zamorano's note, he mentioned the quantity under the idea that it expressed the whole extent of land contained within the boundaries?

If the question were an open one, I might perhaps have inclined to the latter view; but it appears to have been decided by the Supreme Court.

By the decree of the board, the land confirmed was described as follows: "Beginning at the mouth of the Arroyo del Butano,
69 running thence along the sea-coast to the boundary line of Antonio Buelna, the distance being one league, a little more or less; thence with the line of said Buelna east three-quarters of a league; thence southerly and parallel with the sea-coast, until it intersects the Arroyo del Butano at the distance of three-quarters of a league from the coast, and thence along the Butano to its mouth."

If the general course of the Butano were at right angles to the coast, the tract bounded as above would be of the length of one league and the breadth of ¾ of a league. But it is found that the Arroyo del Butano enters the sea at an acute angle. If, then, the back or east line be drawn at a distance of ¾ of a league from the shore and from the boundary of Buelna until it intersects the Butano, it will be considerably more than one league in length, and the land included within the boundaries will exceed ¾ths of a league.

By the decree of this court the land confirmed was described as "that known by the name of San Antonio or El Pescadero, to the extent and within the boundaries mentioned in the grant and map."

The claimant, accepting this decree as limiting him to the quantity mentioned in the grant, appealed to the Supreme
70 Court. His counsel, in an elaborate argument before that tribunal, contended that the grant was for a tract with specified boundaries, and not for a certain quantity of land within those boundaries. In the opinion of the court the question is not discussed. After setting forth the whole expediente and alluding to the proofs of the genuineness of the signatures and the occupation of the land, the court says: "Entertaining no doubt from the facts of the case that the grant is a valid one to the extent of one league in length and three-quarters in breadth, *it is hereby confirmed to that extent*,—the ¾ths of a league to be surveyed within the out boundary represented on the diseño."

Mr. J. Campbell delivered a separate opinion, in which Mr. J. Nelson concurred. In this opinion, after stating the point made by the counsel for the claimants, he says: "But the decision of this question is reserved in the decree of the district court, and will properly arise after the location. The failure to direct the precise

manner of the location is not erroneous. The result, therefore, is that the decree must be affirmed."

As, however, the opinion delivered by Mr. J. McLean is
71 stated to be the opinion of the court, I feel bound to consider the question as fully decided by that tribunal; and that, as declared in that opinion, the claimant is only entitled to $\frac{3}{4}$ths of a league, to be surveyed within the out boundaries mentioned in the grant.

The survey which has been made is of a tract one league in length along the shore, and bounded on the north and south respectively by the line of Buelna and the Butano. The back line is run for quantity so as to include an area of $\frac{3}{4}$ths of a league, but, owing to the deflection towards the south of the Butano, it is run at the distance of little more than half a league from the coast.

It is contended by the intervenors that the grant not only determines the quantity but the shape of the tract, and that it should be of exactly one league in length by $\frac{3}{4}$ths of a league in breadth. The object of thus modifying the survey is to compel the claimant to run his southerly line from the mouth of the Butano at right angles to the shore, and $\frac{3}{4}$ of a league in length towards the east, thus leaving a triangular gore of land north of the Butano which, it is hoped, may be included in the survey of the rancho lying immediately to the south of the rancho of the claimant. But I can perceive no reason for construing, with such strictness, the language of the grant,
72 or that of the Supreme Court. The 4th condition declares the land to be one league in length by $\frac{3}{4}$ of a league in breadth, "*a little more or less.*"

The tract surveyed is of the length of one league along the shore, but of "a little more" than one league in length on its back line, while its width is correspondingly diminished, but nevertheless exceeds $\frac{1}{2}$ a league. A tract of this size and shape sufficiently satisfies the description in the 4 condition.

That the Butano was intended to be one of the boundaries is clear, and I can see no reason for compelling the claimant to stop short of that stream and accept an imaginary line as a boundary, merely to give the tract a rectangular shape, to suit the convenience of a colindante whose grant was long subsequent to his own.

But even if we were compelled to survey a tract of exactly one league in length by $\frac{3}{4}$ of a league in breadth the claimant would still have the right to elect the location within his out boundaries. He would, therefore, be at liberty to demand that his southerly line be run up the Butano a distance of $\frac{3}{4}$ths of a league in a direct line from the shore; that his back line be run thence northerly and parallel with the shore one league, and that his northerly line be run thence
73 to the shore parallel with the course of the Butano. He would thus have a tract precisely $\frac{3}{4}$ths of a league in breadth by one league in length, as called for in the grant, for it is nowhere mentioned that it must necessarily be rectangular in form.

The land desired by the intervenors would thus be included in the survey.

I do not understand that the claimant objects to the present survey, provided he is to be limited as to quantity; and as it appears to me to conform substantially to the calls of the grant I think it ought to be approved.

Endorsed: Filed Sept. 28, 1861.

W. H. CHEVERS, *Clerk.*

Decree.

At a stated term of the district court of the United States for the northern district of California, held at the court room in the city of San, on Friday, the 29 day of November, 1861.

Present: Hon. Ogden Hoffman, district judge.

THE UNITED STATES
v.
JUAN JOSÉ GONZALES. } No. 104.

74 It appearing to the court that on the 5th day of January, 1861, the mandate of the Supreme Court of the United States was filed in this case, and that on the seventh day of May, 1861, an order was entered directing the return of the official survey of the land confirmed in this case; that on the 25th day of May, 1861, in pursuance of said order, the surveyor general returned to this court a certified copy plat of his said survey; that thereupon the claimants, by their attorney, filed exceptions to said survey; that testimony in support of said exceptions was duly taken, and that upon said exceptions and testimony the cause came regularly to a hearing, all parties being heard by their respective attorneys and due deliberation had in the premises:

Now, therefore, in consideration whereof it is ordered, adjudged, and decreed that the said exceptions be, and the same are hereby, overruled; and that the said survey be, and the same are hereby, overruled; and that the said survey be, and the same hereby is, approved and confirmed.

And it is further ordered, adjudged, and decreed that the claim of the said claimants is a good and valid claim for the land granted by the Mexican government to Juan José Gonzales, known as "San Antonio o El Pescadero," and lying and being in the county of
75 Santa Cruz, northern district of California, and that the same be, and hereby is, confirmed to the said Juan José Gonzales, to the extent of three thousand two hundred and eighty-two acres and twenty-two one-hundredths of an acre, ($3,282\frac{22}{100}$ acres,) located and surveyed by the surveyor general of the United States for California, as shown by the said plat filed May 25th, 1861, the field-notes of which survey were approved by said surveyor general April 10th, 1861, and to which said plat, certified by said surveyor general May 7th, 1861, and marked "Approved, November 29, 1861, Ogden Hoffman, district judge," and annexed to, and made a part of, this decree,

335

reference is had for more particular description of the land hereby confirmed to the said claimant.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed November 29, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows map marked page 75.)

76 *Order granting appeal on behalf of Weeks et al.*

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco on Friday, the 29th day of November, in the year of our Lord one thousand eight hundred and sixty-one.

Present : The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
JUAN JOSÉ GONZALES. } No. 104.

This cause having come on to be heard on objections filed to the survey and location of the surveyor general of the United States for California of the land heretofore confirmed to the claimant, pursuant to the provisions of the act of Congress, approved June 14, 1860, and the said survey and location having been approved by the court by its final decree entered this day; now, on motion of H. P. Hepburn, esq., counsel for intervenors, Weeks *et al.*, it is ordered that an appeal in behalf of said intervenors from said final decree be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in said cause be sent to the Supreme Court of the United States without delay.

Endorsed : Filed Nov. 29, 1861.

W. H. CHEVERS, *Clerk.*

77 *Stipulation regarding transcript, &c.*

U. S. district court, northern district of California.

THE UNITED STATES
v.
JUAN JOSÉ GONZALES. } No. 104.

It is stipulated that the record in this cause shall consist of the record on file in the clerk's office of the Supreme Court of the United States, and a transcript of all the proceedings of every kind which have taken place in this court since the filing of the mandate of said Supreme Court (including the same) until the order granting an ap-

peal on the survey and location; the same, together, constituting a full and complete record of the entire proceedings in this cause.

Dated San Francisco, Dec'r 28, 1861.

WM. H. SHARP,
U. S. District Attorney.
H. P. HEPBURN,
Att'y for Bess & Weeks and Widow Gonzales and Claimant.

Endorsed: Filed Dec. 28, 1861.

W. H. CHEVERS, *Clerk.*

78 I, William H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify the annexed and foregoing seventy-seven pages, consecutively numbered, together with the maps and plats included therein, to be a full, true, and correct transcript of the papers and evidence, pleadings, orders, opinions, and decrees, now on file and remaining of record in my office, in the case of the United States *v.* Juan Jos Gonzales, No. 104, from the filing of the *order to file mandate of th Supreme Court* to the *stipulation regarding transcript*, both inclusive.

In witness whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court this 30 day of December, A. D. 1861, and of our independence the eighty-sixth.

W. H. CHEVERS, *Clerk.*

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79 JUAN JOSÉ GONZALES, APP'T, vs. THE UNITED STATES.

Appeal from the district court U. S. for the northern district of California.

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80 *Office of the board of commissioners to ascertain and settle the private land claims in the State of Cal'a.*

Be it remembered that on this eleventh day of February, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Juan José Gonzales for the place named "San Antonio ó El Pescadero," was presented, and ordered to be filed and docketed with No. 336, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *January 26th*, 1853.

In case No. 336, Juan José Gonzales for the place named "San Antonio ó El Pescadero," the deposition of Manuel Jimeno, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 4 of this transcript.)

SAN FRANCISCO, *April 1st*, 1853.

In the same case the deposition of David Spence, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 4 of this transcript.)

SAN FRANCISCO, *Sept. 23d*, 1853.

Case No. 336 called, submitted on briefs on both sides, and taken under advisement.

SAN FRANCISCO, *January 31st*, 1854.

In case No. 336, Juan José Gonzales for the place named "San Antonio ó El Pescadero," Commissioner Robert A. Thompson delivered the opinion of the board confirming the claim.

(Vide page 37 of this transcript.)

Petition.

To the honorable commissioners to settle private land claims in California.

The petitioner, Juan José Gonzales, respectfully represents:

That on the 24th day of December, A. D. 1833, José Figueroa, governor of California, by virtue of authority in him vested,

81 granted to the petitioner the tract of land called San Antonio ó El Pescadero, situate in the present county of Santa Cruz, con-

taining three-fourths of a square league, as shown in the title and corresponding map, which original title is submitted herewith, marked "A," with a translation marked "B." That the said grant of land was duly approved and the possession of it duly given to this petitioner. That he has been for about 20 years, and now is, in the quiet and peaceful occupation of said land. That he knows of no conflicting claim. That he relies for confirmation of title upon the original papers, submitted herewith upon the minutes and records in the archives of the former governments of California, and upon such other and further proofs as he may be advised are necessary.

Wherefore he prays the commissioners to confirm to him the aforementioned tract of land.

By his att'ys,

HALLECK, PEACHY & BILLINGS.

Filed in office Sept. 11th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Manuel Jimeno.

SAN FRANCISCO, *Jan'y 27th*, 1853.

On this day, before Com. Harry J. Thornton, came Manuel Jimeno, a witness in behalf of the claimant, Juan José Gonzales, petition No. 336, and was duly sworn, his evidence being interpreted by the secretary.

In answer to questions propounded by claimant's counsel, the witness testifies as follows:

My name is Manuel Jimeno; my age is 49 years; I have lived in California 24 years; I know the rancho called San Antonio, in the county of Santa Cruz. Juan José Gonzales has to my knowledge occupied this land since 1833; he has had a house, cattle, and horses on it, and sowings; he lives on it now.

MAN'L JIMENO.

U. S. law agent present.

Sworn to and subscribed before me this 27th of Jan'y, 1853.

HARRY J. THORNTON, *Com'r, &c.*

Filed in office Jan'y 27th, 1853.

GEO. FISHER, *Sec'y.*

Deposition of David Spence.

SAN FRANCISCO, *April 1st*, 1853.

On this day, before Comm'r Harry J. Thornton, came David Spence, a witness on behalf of the claimant, Juan José Gon-
82 zales, petition No. 336, and was duly sworn, his evidence being given in English.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is David Spence; my age is nearly 55 years. I reside in Monterey, and have lived in California 29 years.

I am acquainted with the handwriting of José Figueroa and Augustin N. Zamorano, having often seen them write; their signature to paper marked Exhibit No. 1, and filed with this deposition, are their genuine signatures.

U. S. law agent present.

D. SPENCE.

Sworn to and subscribed before me this 1st of April, 1853.

HARRY J. THORNTON,
Com'r, &c.

Filed in office April 1st, 1853.

GEO. FISHER, *Sec'y.*

Communication from office of U. S. surveyor general.

SURVEYOR GENERAL'S OFFICE,
San Francisco, Cal'a, 2d Sept., 1852.

GENTLEMEN: At the request of the counsel for the claimant, I enclose herewith a certified copy of espediente sobre el paraje, markado Sr. Antonia (a) el Parcadero solicitado por Juan José Gonzales. 23.

Very respectfully, your ob't serv't,

SAM. D. KING,
S'r Gen.

The Board of CALIFORNIA LAND COM'RS,
Los Angeles, Cal'a.

Filed in office Sept. 13th, 1852.

GEO. FISHER, *Sec'y.*

A.—*San Antonio title.*

Sello segundo—Doce reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey, para los años de mil ochocientos treinta y dos y mil ochocientos treinta in tres.

RAFAEL GONZALES.

FIGUEROA.

José Figueroa, Gen'l de Brigada de los Ejercitos Nacionales Mejicanos, Com'te Gen'l, Ynsp'r y Gefe, Sup'r Politico de la Alta California.

Por cuanto Juan José Gonzales, Mejicano por nacimiento ha
83 pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de San Antonio Buelna, la Sierra la Costa, y arroyo del Butano; practicadas previamente las diligencias y averiguaciones consermientes, segun lo dispuesto por leyes y reglamentos; usando de las facultades qe. me son conferidas, en decreto

de diez y siete del corriente a nombre de la nacion Mejicana, he venido en concederle la propriedad de el por las presentes letras entendiendose dicha concesion con entera conformidad a lo dispuesto por las leyes a reserva de la aprovacion ó disaprovacion de la ex'ma diputacion territorial y del supremo gobierno bajo las condiciones siguientes:

1a. Que se sometera a las qe. estableciere el reglamento qe. se ha de formar para la distribucion de terrenos valdios, y qe. entretanto ni el agraciado ni sus herederos podran dividir, ni engenar el qe. si le adjudica imponer censo, vinculo, fianza, hipoteca, ni otro gravamen aunque sea por causa piadosa ni pasarlo a manos muertas.

2a. Podra circarlo sin prejudicar las travesias caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo qe. mas le acomode pero dentro de un año a lo mas fabricara casa y estara habitada.

3a. Cuando se le confirme la propriedad solicitara del juez respectivo qe. le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mohoneras algunos arboles frutales ó silvestres de alguna utilidad.

4a. El terreno de qe. se le hace donacion es de una legua de longitud, por tres cuartos de leguas de latitud poco mas ó menos segun esplica el diceño qe. corre en el espediente. El juez qe. diere la posecion lo hara medir conforme a ordenanza para señalar los linderos quedando, el sobrante qe. resulte a la nacion para los usos convenientes.

5a. Si contraveinere a estas condiciones perdera su derecho al terreno y sera denunciable a otro.

En consecuencia mando qe. sirviendole de titulo el presente y teniendose por firme, y valedero se tome razon en el libro a qe. corresponde y se entregue al interesado.

Dado en Monterey, a veinte y cuatro de Diciembre, de mil ochocientos treinta y tres.

JOSÉ FIGUEROA.

AUGUSTIN V. ZAMORANO, *S'rio.*

Queda tomada razon en el libro de asientos de titulos sobre adjudicasion de terrenos a fojas veinte y una numero diez y nueve qe. obra en el archivo de la secretaria de mi cargo.

84 Monterey, Diciembre veinte y cuatro de mil ochocientos treinta y tres.

ZAMORANO.

Filed in office September 11th, 1852.

GEO. FISHER, *Sec'y.*

B.—*Translation of title.*

Stamp second—Twelve reales.

Provisionally authorized by the administration of the maritime custom-house of Monterey, for the years 1832 and 1833.

RAFAEL GONZALES.

FIGUEROA.

José Figueroa, general of brigade of the national armies of Mexico, commanding general, inspector and superior political chief of Upper California:

Whereas Juan José Gonzales, a Mexican by birth, has, for his own personal benefit and that of his family, petitioned for the land known by the name of San Antonio or El Pescadero, bounded by the rancho of Antonio Buelna, sierra, the coast, and the arroyo of Buntano, the proper measures and examinations being previously made, as required by laws and regulations, using the powers which are conferred on me in decree of the seventeenth of this month, in the name of the Mexican nation I have granted him the aforesaid land, declaring to him the ownership of it by these presents; said grant being understood to be in entire conformity with the provisions of the laws, subject to the approval or disapproval of the most excellent territorial deputation, and of the supreme government, under the following conditions

1st. That he will submit to those which may be established by the regulations which *is* to be made for the distribution of vacant lands; and, in the mean time, neither the grantee nor his heirs can divide or alienate that which is granted to them, subject it to any tax, entail, pledge, mortgage, or other incumbrance, even for pious purposes, nor convey it in mortmain.

2d. He may enclose it, without prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, making such use or cultivation of it which *as* may best suit him; but within one year, at furthest, he shall build a house, and it shall be inhabited.

3d. When the ownership is confirmed to him, he will request the proper magistrate to give him juridical possession, in virtue of this title, by whom the boundaries will be marked out; in which, besides the bounds, he will place some fruit or forest trees of a useful character.

4th. The land of which donation is made him is one league in length by three-quarters of a league in breadth, a little more or less, as shown by the map which goes in the espediente; the magistrate who may give the possession will cause it to be measured in conformity with the ordinance, in order to mark out the boundaries, leaving the surplus which may result to the nation for its convenient uses.

5th. If he contravene these conditions he will lose his right to the land, and it will be subject to denouncement by another person.

In consequence, I order that the present serving him for a title, and being held as firm and valid, note be made of it in the corresponding book, and it be delivered to the person interested.

Given in Monterey, on the twenty-fourth of December, one thousand eight hundred and thirty-three.

(Signed) JOSÉ FIGUEROA.

(Signed) AGUSTIN V. ZAMORANO, *Secretary.*

Note has been made in the book of entries of titles of grant of lands, on folio 21, number 19, which exists in the archives of the secretary's office in my charge.

(Signed) ZAMORANO.

Monterey, December 24th, 1833.

Filed in office Sept'r 11th, 1852.

GEO. FISHER, *Sec'y.*

[1 S. D. K.]

Jurisdiccion de No. 19. Branciforte 21. Año de 1833.

Espediente.

Sobre el paraje nombrado Sn. Antonio (a) el Pescadero solicitado por.

JUAN JOSÉ GONZALES.

23.

C.—*Espediente.*

Sello tercero—Dos reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey para los años de mil ochocientos treinta y tres, y mil ochocientos treinta y cuatro.

JOSÉ RAFAEL GONZALES.

FIGUEROA.

S'OR COM'TE GRAL: El ciud'o Juan José Gonzales, nativo en la mision de Sta. Cruz besino de la villa de Branciforte, residente y empleado en d'ha mision de Sta. Cruz y mayordomo, de la misma cassado, con 13 personas de familia, haviendo servido a la nacion 8 a's 2 meses de soldado, y habiendo obtenido mi hiensia del S'or Com'te Gral. D'n Manuel Victoria, con la condicion de un recluta que puse a mi costa; y ayandome con 500 cabesas de ganado mayor en propriedad, una manada de 30 regiegas y no teniendo un sitio
86 ni parage donde redicarme, causado ya de las molestias de estar en reunion en la misma villa donde no epodido ni puedo progresar, a causa de la misma reunion donde he notado gran deminto, en el fue que puse de 12 a's a esta parte; y ayandome aora en la actualidad favorecido de la misma nacion de Sta. Cruz donde se sacrifico mi defunto padre 20 a's y donde yo sirbo en su lugar, siendo y aviendo sido los salarios nuy baxos, baxo de este supuesto, el ministro qe. sirve en la actualidad en la misma mision (que es Fry. Antonio Real) quien satisfecho de mis servicios, y de los del difunto mi padre, me a querido favorecer aseguandome el rancho de San Antonio anteriam'te y amado el Pescadero Realengo o desocupado de la misma mision, esta distencia de 12 leguas al noroeste colindando con el rancho de S. Gregoiro, cuyo sitio ba delineado en el papel que acompaño abrasando en cuadro como cuatro leguas colindando de la casta

a la sierra, y de S'r Gregoiro (a rancho que ocupa el ciud'o Antonio Buelna) al rancho de la punta de año nuebo, que es el ultimo, que ocupa la mision, y deseando una seguridad o afianse en el mismo sitio (con aunensia del mismo ministro) ocurro a V'a con el denido respeto, suplicandole se sirva daune en posesion, el ya sitado sitio, atendiendo a mi cresida familia. Y sua en lo que recibe merce y faber su mas adiyto sub dito y S. S. qe. le desea in's a's de vida y atento S. M. B.

Sta. Cruz, O'bre 26, de 1833.

JUAN GONZALES.

MONTEREY, *Nov'e* 29, *de* 1833.

De conformidad con las leyes de la materia informe el ayuntamiento de la villa de Branciforte si el interesado en esta instancia obtiene los requisitos prevenidos para ser atendido en su solicitud, si el terreno que pretende esta comprendido en las 20 leguas limitrofes o 10 litorales que esprexi la ley de 18 de Agosto, de 1824, si es de regardio temporal o abrevadero, si pertenece a propriedad particular, corporacion o pueblo, con todo lo demas que sea conserniente a ilustrar la materia evacuado que sea pasara este espediente al R. P. ministro de la mision de Santa Cruz, para qe. esponga lo que le occurra en el particular. El S'or Dn. José Figueroa, general de brigada y comandante, ynsp'r general y gefe sup'r politico del territorio asi lo mando, decreto y firmo de que doy fee.

FIGUEROA.

AGUSTIN V. ZAMORANO, *S'rio.*

En cumplimiento a lo qe. V. S. ordena a este alluntamiento de su mando en su decreto de 29 de Noviembre, de 1833, en qe. informe si el interesado en esta instancia tiene los requisitos prebenidos para ser atendido en su solicitud, y si el terreno qe. pretende esta comprendido en la materia qe. espresa la ley.

87 [4 S. D. K.]

El terreno qe. pretende el contenido en esta instancia en el dia—

(Sello tercero—Dos reales.

Habilitado provisionalmente por la aduana maritima de Monterey, para los años de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro.

JOSÉ RAFAEL GONZALES.

FIGUEROA.)

—se le puede conseder pues tiene todas las circumstancias prebenidas para ser atendido en su solicitud y es acredor a el, es hun paraje desocupado no tiene tienas de regadio de temporal si tiene, se a reconocido por propriedad de la mision de Santa Cruz, y para los fines qe. combengan firmo este informello, y el segundo regidor por ausencia de el primero en la casa consestorial de la villa de Branciforte 29 de Diciembre, de 1833.

JOSÉ MA. SALAZAR.

JOSÉ ANTO. ROBLES.

Soy conforme a qe. se le conceda al pretenso Juan Gonzales el sitio qe. pretende, pues es un paraje qe. esta mision, no ocupa en la actualidad, ni se jusga necesario en su posicion de qe. pa. sus costos ganados tiene tierras suficientes, y qe. ayandose desocupado, se jusga Realengo a mas de qe. cuando la mision la ocupo, fue en abundancia de los mismos ganados, y a causa de escases de pastos y aguas, en los años subricuentes los ganados an nuerto y deteriorados y a no nesesitan del tal terreno los pocos qe. quedan; el sugeto es de minto, y la mision le deve aute poner a cualesquiera otro, tiene todas las circumstancias y es acindos y pa. qe. conste lo firmo a 7 D'bre, de 1833.

FR. ANTO. DE REAL,
M'tro de Sta. Cruz.

[5 S. D. K.]

MONTEREY, *Diciembre* 10, *de* 1833.

Pasé al alcalde de esta capital ante qe. la parte producira una nformacion de tres testigos idoneos qe. seran interrogados sobre los puntos siguientes:

1o. Si el solicitante es Mejicano por nacimiento, si ha servido en la carrera militar, si es casado y tiene hijos, si es de buena conducta.

2o. Si el terreno qe. pretende es de la propriedad al algun particular. Corporacion o Pueblo si es de regadio, temporal y abrevadero, y qe. estencion tendra.

3a. Si tiene vienes de campo con qe. poblarlo o posibilidad de adquirirlos. Practicada esta diligencia buelva el espediente para
88 su resolucion. El Sr. gefe, politico comandante gral. insp'r y gen'l de brigada, Don José Figueroa, asi lo mando, decreto y firmo de qe. doy fé.

JOSÉ FIGUEROA.

AGUSTIN V. ZAMORANO.

[*For map see original, page* 88.]

[7 S. D. K.

Sello Tercero—Dos Reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, para los años de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro.

JOSÉ RAFAEL GONZALEZ.

FIGUEROA.

Dro. 3 p.

—TEREY, *Diciembre* 13, *de* 1833.

Notifiquese al interesado en este espediente presente los testigos qe. se han de ecsaminar sobre los puntos que comprehende el superior decreto que antende de lo del presente qe. antecede. Asi yo el

alcalde lo decreto mande y firme con los testigos de asistencia en la forma establecida.

T. MARCELINO ESCOBAR.

De ass'a, JOSE MA. MALDONADO.
De ass'a, JOSE ANTONIO ROMERO.

En el mismo dia presente Juan José Gonzales se le notificio el auto qe. antecede y entendido Dijo, lo aye y qe. presente a los ciud's Salvio Pacheco, Manuel Larios, y Felipe Hernandez, y lo firmo conmigo y los testigos de asistencia.

JUAN GONZALES.

ESCOBAR.
De ass'a, JOSE MARIA MALDONADO.
De ass'a, JOSE ANTONIO ROMERO.

[8 S. D. K.]

En el Puerto de Monterey a los trece dias del mes de Diciembre de mil ochocientos treinta y tres, presente el C. Salvio Pacheco testigo presentado p'r la parte del interesado se le recivio juramento en forma de d'ho por el cual ofrecio decir verdad en lo que supiere y pure preguntado y siendolo por su nombre estado, edad, patria y religion. Dijo llamarse como queda d'ho, qe. es casado, de edad de treinta y ocho años, natural de esta capital y C. A. R.

Preguntado por el interrogatorio qe. se advierte en el superior decreto que antecede dijo, a lo primero que el solicitante es Mejica-
89 no par nacimiento que ha servido en la carrera militar en la compañia de caballeria del puerto de San Francisco, que es casado y tiene tres hijos que le conoce que la conducta que le ha observado es buena y nunca se le ha reprendido. A lo segundo dijo que el terreno que solicita no sabe que pertenesca a propriedad alguna de particular y solo sabe por diceres que pertenece a la mision de Sta. Cruz que tiene el d'ho terreno mas de temporal qe. abrevadero qe. de regadio por no estar impuesto muy bien de el y qe. la estencion qe. tiene a su ver sera de una y media legua de oriente a poniente y de sur a norte no sabe con certeza lo qe. tendria por su un cañon qe. toca hasta el rancho de C. Antonio Buelna.

A lo tercero dijo que los vienes de campo que le conose sera un numero de dos cientos reses y una manda de lleguas y caballada mansa con lo que crea pueda poblarlo que lo dicho es la verdad a cargo del uramento que—

[9 S. D. K.]

Sello tercero—Dos reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, para los años de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro—

JOSÉ RAFAEL GONZALES.

FIGUEROA.

—tiene hecho en el qué se afirmo y ratifico, leida que le fue esta su declaracion y lo firmo conmigo y los asistencia.

M. ESCOBAR.
SALVIO PACHECO.

De ass'a, JOSE ANTONIO ROMERO.
De ass'a, JOSE MARIA MOLDONADO.

En la misma f'ha presente el C. Manuel Larios se le recivio juramento en forma de d'ro por el cual ofrecio decir verdad en lo que supiere y fuese preguntado y siendole por su nombre estado edad patria y religion. Dijo llamarse como queda referido que es casado, de treinta y cinco años, natural del pueblo de San José, y C. A. R.

Preguntado en los mismos terminos que lo fue el primero testigo dijo. A lo primero que es Mejicano por nacimiento, que ha servido en la carrera militar en la comp'a de caballeria en el puerto de Sn. Franc'o que es casado y tiene hijos y que la conducta q'e tiene es muy buena.

A lo segundo dijo: que el terreno que solicita no sabe mas que pertenece á la mision de Sta. Cruz; pero que tambien sabe se [10 S. D. K.] lo ha sedido el padre ministro de ella que el parage d'ho es de temporal y abrevadero y que con cultivo y trabajo puede tener algunas partes de regadio, que la estencion que sera de una legua ó mas de ancho y dos de la playa a las lomas.

A lo tercero responde que tiene vienes de campo con que poblaro asi como caballada q'e lo q'e tiene dicho es la verdad á cargo del
90 juramento q'e tiene hecho en el q'e se afirmo y ratifico leida q'e le fue esta su declaracion y no firmo por q'e dijo no saber lo hice yo y los de asistencia.

M. ESCOBAR.

De ass'a, JOSÉ MARIA MOLDONADO.
De ass'a, JOSÉ ANT'O ROMERO.

En la misma f'ha presente el C. Felipe Hernandez se le recibio el juramento en forma de derecho por el cual ofiecio decir verdad en lo q'e supiere y fuese preguntado, y siendolo per su nombre, estado, edad, patria y religion. Dijo llamarse como dicho esta, q'e es vindo de fesenta y cuatro años, natural de la Barca y C. A. R. reg'do, en los terminos q'e los anteriores dijo. A lo primero: que el solicitante es Mejicano por nacimiento que ha servido en la carrera militar; que es casado—

[11 S. D. K.]

(Sello tercero—Dos reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, para los años de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro—

JOSÉ RAFAEL GONZALES.

FIGUEROA.)

—y tiene 11 hijos; y q'e su conducta es buena. A lo segundo, dijo, que el terreno q'e solicita no sare q'e pertenesca á ninguna pro-

priedad; qee es de temporal y abrevadero y q'e su estencion ignora cual sea.

A lo tercero dijo: q'e tiene suficientes vienes de campo para poblarlo, y q'e lo dicho es la verdad a cargo del juram'to q'e tiene hecho en el q'e se afirmo y ratifico leida q'e le fue esta su declaracion y no firmo pr. no saber lo hice yo y los de as'a.

M. ESCOBAR.

De as'a, JOSÉ MARIA MALDONADO.
De as'a, JOSÉ ANTONIO ROMERO.

MONTERREY, *Dec.* 13, *de* 1833.

Concluidas las diligencias q'e se mandan en el antesedente superior decreto, ruebra el espediente al S. gefe, superior politico para su superior resolucion. Asi yo el alcalde const'te lo decreto, mandé y firmé con los testigos de as'a.

F. MARCELINO ESCOBAR.

De as'a, JOSE MARIA MALDONADO.
De as'a, JOSE ANTO. ROMERIO.

[12 S. D. K.]

MONTERREY, *Diciembre* 17, *de* 1833.

Vista la peticion con q'e da principio este espediente el informe de la autoridad municipal de la villa de Branciforte, el del
91 R. P. ministro de la mision de Sta. Cruz las esposiciones de las testigos con todo lo demas q'e se tubo presente y ver convino de conformidad con lo dispuesto por las leyes y reglamentos de la materia se declara á Juan José Gonzales dueño en propriedad del terreno conocido con el nombre de S'n Antonio (ó) el Pescadero Colindante con el rancho de Antonino Buelna, la sierra, la Costa y arroyo del Biotano sugeto á las condiciones q'e se estipularen librese el despacho correspondiente, tomese razon en el libro respectivo y dirijase este espediente para la divida aprovacion á la exma. diputacion territorial, en cuyo caso el interesado, a quien se le hara saver este decreto presentara nuevamente su titulo para q'e se revalide.

El Sr. D. José Figueroa, gen'l de brigada, com'te gen'l ynsp'or y gefe, sup'r politico de la Alta California asi lo mandó, decreto y firmó de q'e doy fé.

JOSÉ FIGUEROA,
AGUSTIN V. ZAMORANO.

[13 S. D. K.]

Sello tercero—Dos reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterrey, para los años de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro.

JOSÉ RAFAEL GONZALES.

FIGUEROA.

En 24 de Diciembre, de 1833, habiendo comparecido en esta secretaria la parte de Juan José Gonzales se le hizo saver el decreto q'e

antecede del S'r gefe, superior politico y enterada de el dijo: q'e lo oye y de quedar conforme lo firmo con migo pa. la divida const'a.

JUAN GONZALES.

AGUSTIN V. ZAMORANO.

Las comisiones de colonizacion y terrenos valdios á quienes se pasó el espediente, cuya formacion provoco por pretencion q'e el c'no Juan José Gonzales hizo del parage nombrado S'n Antonio el Pescadero, le han ecsaminado con la circumspesion que corresponde, teniendo al mismo tiempo presente la ley de 18 de Agosto, de 1824, sus concordantes y las disposiciones generales q'e en 24 de Nov're, de 1828, decreto el supremo gobierno de la union p'a el mejor cumplim'to de la primera.

Del ecsamen del espediente se ha penetrado la comision de la opinion q'e ya tenia de la escrupaloridad, y teno con que el Sor. gefe, politico lo mando instruir; de suerte que ni en su formacion se estravia algun requisito hecencial de los practicados. Por lo dicho concluye la comision ofreciendo à la deliberacion de esta exma. diputacion la siguiente proposicion:

la. Se aprueba la concession hecha al c'no Juan José Gon-
92 zales del parajé nombrado San Antonio el Pescadero en 24 de Diciembre, de 1833, de entera conformidad con lo prevenido en la ley de 18 de Agosto, de 1824, y el articulo 5 del reglamento de 21 de Nov're, de 1828.

Monterey, Mayo 10, de 1834.

CARLOS ANTO. CARRILLO,
JOSÉ T. ORTEGA,
JOSÉ A. ESTUDILLO,
JOSÉ CASTRO.

[14 S. D. K.]

MONTERREY, 17 *de Mayo de* 1834.

En sesion de este dia se aprovó por la exma. diputacion la proposicion del dictamen antecedente mandando se devuelva el espediente al Sor. gefe, sup'r politico, para las fines consiguientes.

JOSÉ FIGUEROA.

JUAN B. ALVARADO, *S'rio.*

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the fifteen preceding and hereunto annexed pages of tracing paper, numbered from one to fifteen inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at [SEAL.] the city of San Francisco, Cal'a, the 2d day of September, 1852.

SAM'L D. KING,
Surv'r Ge'l Cal'a.

(2d Sept., 1852. S. D. K.)

Filed in office Sept'r 13th, 1852.

GEO. FISHER, *Sec'y.*

D.—*Translation of Espediente.*

Stamp third—Two reales.

Provisionally authorized by the maritime custom-house of Monterey for the years one thousand eight hundred and thirty-three and one thousand eight hundred and thirty-four.

(Signed) FIGUEROA.

(Signed) JOSÉ RAFAEL GONZALES.

93 To his excellency the Commanding General:

I, citizen Juan José Gonzales, native of the mission of Santa Cruz, resident of the town of Branciforte, residing and employed in said mission of Santa Cruz, and mayordomo of the same, married, with a family of thirteen persons, having served the nation eight years and two months as a soldier, and having obtained my discharge from his excellency the commanding general, Don Manuel Victoria, with the conditions of furnishing a recruit, which I did at my own expense, and finding myself with 500 head of large cattle, and having no land or place to settle on, tired of the trouble of being together in the same village, where I have been and am unable to progress on account of the same; living where I have noted a great loss in the stock which I placed twelve years ago, and being now actually favored by the same mission of Santa Cruz, where my deceased father exposed (sacrifice) himself for 20 years, and where I serve in his place, the salaries of this post being and having been very low, the minister who attends at present in the same mission, (Friar Antonio Real,) satisfied with my services and those of my deceased father, has wished to favor me by assigning to me the rancho of San Antonio, formerly called El Pescadero Realengo, which is not occupied by said missions, is distant 12 leagues to the northwest, bounded by the rancho of San Gregorio, which place is delineated on the accompanying paper, including a square of about four leagues, extending from the coast to the sierra, and from the rancho of San Gregorio (rancho occupied by citizen Antonio Buelna) to the rancho of La Punta de Año Nuevo, which is the further occupied by the mission, and desiring a security or guaranty in the same place, I apply, with the consent of the same minister, to your excellency, with the due respect, praying that you will be pleased to give me in possession the aforesaid place, in consideration of my large family, and which will

confer favor and grace on your most attached subject and servant, who wishes you many years of life, &c., &c.

Santa Cruz, Nov. 26th, 1833.

(Signed) JUAN GONZALES.

MONTEREY, *Nov. 29th*, 1833.

In conformity with the laws on the matter, let the ayuntamiento of the town of Branciforte report whether the person interested in this petition possesses the requisites to the attended to in his petition; whether the land he asks for is included in the 20 leagues from the boundary, or 10 from the sea-shore, referred to in the law of Aug't, 1824; if it is irrigable, dependent on the seasons, or pasture land; if it belongs to the ownership of any private individual, corporation, or pueblo, with everything else which may be proper to explain the matter.

This being concluded, it will pass this espediente to the 94 rev. father, minister of the mission of Santa Cruz, that he may report what he knows on the matter. Señor Don José Figueroa, general of brigade and commandant, inspector general, and superior political chief of the territory, thus ordered, decreed, and signed, to which I certify.

FIGUEROA.

AGUSTIN V. ZAMORANO, *Secretary.*

In compliance with your excellency's orders to this ayuntamiento, under your *commans* in the decree of November 29, 1833, to report whether the person interested in this petition possesses the requisites to be attended to in his request, and if the land he asks for be included in those referred to in the law.

The land asked for by the person interested in this petition may now be granted to him, for he has all the circumstances required in order to be attended to, and is entitled to it.

It is an unoccupied place; has no irrigable lands; has lands dependent on the seasons; has been recognized as the property of the missions of Santa Cruz; and for the purposes it may serve, I sign this with the 2d regidor, on account of the absence of the first, in the town hall of the town of Branciforte, on the 2d December, 1833.

(Signed) JOSÉ ANTONIO ROBLES.
(Signed) JOSÉ MARIA SALASAR.

I agree to these being granted the petitioner, Juan José Gonzales, the place he asks for, as it is a place which this mission does not at present occupy, nor is it deemed necessary for it, in consideration of the fact that it has land enough for its few cattle, and, that being unoccupied, it is considered public land; besides, when the mission occupied it, it had abundance of cattle, and on account of scarcity of pasture and water in subsequent years the cattle have died and diminished, and the few that remain do not need the land. He is a person of merit, and the mission ought to place him before any other person.

He has all the requisites, and is entitled to it, and in testimony I sign it on the 7th of December, 1833.

(Signed) Friar ANTONIO SUAROZ DEL REAL,
Minister of Santa Cruz.

MONTEREY, *December* 10, 1833.

Let it pass to the alcalde of this capital, before whom the party will produce an information of three fit *witness*, who will be questioned upon the following points:

1st. If the petitioner is a Mexican by birth; if he has served in the army; if he is married and has children; if he is of good conduct.

95 2d. If the land he asks for is of the ownership of any individual, corporation, or pueblo; if it is irrigable, dependent on the seasons, or pasture land, and what is its extension.

3d. If he has cattle with which to stock it, or the possibility of acquiring them.

This examination being made, let him return the espediente for its decision.

His excellency the political chief, commanding general, inspector and general of brigade, Don José Figueroa, thus ordered, decreed, and signed it; to which I certify.

(Signed) JOSÉ FIGUEROA.
(Signed) AUGUSTUS V. ZAMERANO,
Secretary.

Fees $3 00.

MONTEREY, *December* 13, 1833.

Let the party interested in this espediente be notified to present the witnesses which are to be examined on the points included in the superior decree of the 10th inst., which precedes this.

Thus I, the alcalde, decreed, ordered, and signed it with the assisting witnesses, in the established form.

(Signed) MARCELINO ESCOBAR.

Assisting witnesses:

(Signed) JOSE MARIA MALDONADO.
(Signed) JOSE ANTONIO ROMERO.

On the same day, present Juan José Gonzales, the foregoing act was made known to him; and having understood it, he said that he heard it, and that he presents citizens Salvio Pacheco, Manuel Larios, and Felipe Hernandez, and he signed it with me and the assisting witnesses.

(Signed) M. ESCOBAR.
(Signed) JUAN GONZALES.

Assisting witnesses:

(Signed) JOSE MARIA MALDONADO.
(Signed) JOSE ANTONIO ROMERO.

In the port of Monterey, on the 13th day of the month of December, one thousand eight hundred and thirty-three, present Salvio Pacheco, witness presented on the part of the persons interested, oath was received of him in form of law, by which he promised to speak truth in that which he might know; and being asked for his name, estate, age, country, and religion, he said that he is called as has been said; is married; thirty-eight years old; a native of this capital, and Apostolic Roman Catholic.

Questioned as to the interrogatory referred in the foregoing superior decree, he said to the 1st:

96 That the petitioner is a Mexican by birth; that he has served in the army in the cavalry company of the port of San Francisco; that he is married and has thirteen children that he knows of; that his conduct, as far as he has observed, is good, and he has never been reprehended.

To the 2d he said: That he does not know that the land petitioned for pertains to the ownership of any private individual, and only knows by rumor that it pertains to the mission of Santa Cruz; that there is more land dependent on the seasons and pasture land than irrigable; but he is not very well acquainted with it, and that its extent is from a league to a league and a half from east to west and from north to south; he does not know how much of it is, as it is a cañon which reaches to the rancho of citizen Antonio Buelna.

To the third he said: That the number of cattle he is known to have is about two hundred head, and a drove of mares and tame horses, with which he believes he can stock it; that what he has said is true, under the oath which he has made, which he affirms and ratifies; and this, his declarations, having been read to him, he signed it with me and those of my assistance.

(Signed) M. ESCOBAR.
(Signed) SALVIO PACHECO.

Assisting witnesses:
(Signed) JOSE MA. MALDONADO.
(Signed) JOSE ANTO. RAMERO.

In the same date, present citizen Manuel Larios, oath was received of him in form of law, by which he promised to speak the truth in all that he might know and be asked; and being asked for his name, estate, age, country, and religion, he said that he is called as has been said; that he is married; thirty-five years old; native of the pueblo of San José, and Apostolic Roman Catholic.

Questioned in the same terms in which the first witness was, he replied to the first: That he is a Mexican by birth; that he has served in the army, in the company of cavalry of the port of San Francisco; that he is married and has children, and that his conduct is very good.

To the second: That he only knows that the land petitioned for pertains to the mission of Santa Cruz, but that he also knows that the father minister of it has granted it; that the said place is dependent on the seasons and pasture land, and that there may be

some point that with labor and cultivation will be irrigable; that its extent is about a league or more wide, and two from the beach to the hills.

To the third he replies: That he has cattle with which to stock it, as well as horses; that what he has said is true, under the oath which he has made, which he affirms and ratifies; this his declara-
97 tion having been read to him, and did not sign, because he did not know how. I did so with those of assistance.

(Signed) M. ESCOBAR.

Assisting witnesses:
(Signed) JOSE MARIA MALDENADO.
(Signed) JOSE ANTONIO RAMERO.

On the same date, present citizen Felipe Hernandez, oath was received of him in form of law, by which he promised to speak truth in all that he might be asked and know; and being asked for his name, estate, age, country, and religion, he said he is called as has been said; that he is a widower, seventy-four years old; native of La Baja, California, and Apostolic Roman Catholic.

Questioned in the same terms as the first, he said to the first: That the petitioner is a Mexican by birth; that he has served in the army; is married and has eleven children, and that his conduct is good.

To the second he said, that the land which he petitions for is not, to his knowledge, of any ownership; that it is dependent on the seasons and pasture land, and he does not know what its extent is.

To the third he said, that he has sufficient cattle to stock it; and that what he has said is true under the oath which he has made, which affirms and ratifies; this his declaration having been read to him, and did not sign, because he did not know how. I did it with those of assistance.

(Signed) M. ESCOBAR.

Assisting witnesses:
(Signed) JOSE MALDONADO.
(Signed) JOSE ANTONIO RAMERO.

MONTEREY, *December* 3, 1833.

The official acts ordered in the foregoing superior decree being finished, let the espediente be returned to the superior political chief for his superior decision.

Thus I, the constitutional alcalde, decreed, ordered, and signed with the assisting witnesses.

(Signed) M. ESCOBAR.

Assisting witnesses:
(Signed) JOSE MARIA MALDONADO.
(Signed) JOSE ANTONIO RAMERO.

MONTEREY, *December* 17*th*, 1833.

Having seen the petition with which this espediente commences, the report of the municipal authority of the town of Branciforte, that of the Rev. father minister of Santa Cruz, the declarations of the witnesses, together with all other things which were presented and deemed proper to be seen, in conformity with
98 the provisions of the laws and regulations on the matter, Juan José Gonzales is declared owner in fee of the land known by the name of San Antonio, (or El Pescadero,) bounded by the rancho of Antonio Buelna, the sierra, the coast, the Arroyo del Brotano, subject to the conditions which may be stipulated. Let the corresponding patent issue, let note be made in the proper book, and let this espediente be directed for the approbation of the most excellent territorial deputation, in which case the person interested, who will be made to know this decree, will again present his title that it may be revalidated.

Señor Don José Figueroa, brigadier general, commanding general, inspector and superior political chief of Upper California, thus ordered, decreed, and signed, to which I certify.

(Signed) JOSÉ FIGUEROA.

(Signed) AUGUSTIN V. ZAMORANO.

On the 24th of December, 1833, the party, Juan José Gonzales, having appeared in this office, he was made to know the foregoing decree of the superior political chief, and, having understood it, he acknowledged notice, and signed with me for its due testimony.

JUAN GONZALES.

AUGUSTIN V. ZAMORANO.

The committee on colonization and vacant lands, to whom was referred the espediente, the formation of which was caused by the petition of citizen Juan José Gonzales for the place named San Antonio, or El Pescadero, having examined it with the corresponding circumspection, taking into consideration at the same time the law of August 18th, 1824, those agreeing with it, and the general directions which on the 24th November, 1828, the supreme government of the Union gave for the better fulfilment of the first: From the examination of the espediente the committee has become impressed with the opinion which it before held of the scrupulousness and tact with which his excellency the political chief ordered it to be made, so that neither in its formation, nor in the steps taken, is any essential requisite wanting; wherefore the committee concludes by offering to the deliberation of this most excellent deputation the following proposition:

1st. Approved the grant made to citizen Juan José Gonzales, of the place named San Antonio El Pescadero, on the 24th December,

1833, in entire conformity with the provisions of the law of August 18th, 1824, and article 5th of the regulations of Nov. 21, 1828.

MONTEREY, *May* 10*th*, 1834.

(Signed) CARLOS ANTONIO CARRILLO.
(") JOSÉ CASTRO.
(") JOSÉ T. ORTEGA.
(") JOSÉ A. ESTUDILLO.

99 MONTEREY, *May* 17*th*, 1834.

In sessions of this day the proposition of the foregoing report was approved by the most excellent deputation, ordering that the espediente be returned to his excellency the superior political chief for the convenient purposes.

(Signed) JOSÉ FIGUEROA.
(Signed) JUAN B. ALVARADO, *Secretary.*

Filed in office January 4th, 1852.

GEO. FISHER, *Sec'y.*

Opinion of the board, by Com'r R. Aug. Thompson.

JUAN JOSÉ GONZALES *vs.* THE UNITED STATES. } Case No. 336.

For the place called San Antonio or El Pescadero, claim for 1 sq. league of land in the county of Santa Cruz.

This claim is founded on a grant made by Governor Figueroa, on the 24th day of December, 1833, to the present claimant, which was duly approved by the territorial deputation on the 17th day of May following. The grant describes the land as that known by the name of San Antonio or El Pescadero, bounded by the rancho of Antonio Buelna, the sierra, the coast, and the Arroyo de Butano. The fourth condition states that the land of which donation is made is one league in length, and three-quarters of a league in breadth, a little more or less, as shown by the map which goes with the espediente, with the usual reservations of the sobrante or overplus to the use of the nation. The boundaries are distinctly marked out on the map; and although there is no scale on the map by which the extent of the boundaries can be ascertained, but there is a note made upon it stating that they extend one league from north to south, and three-quarters of a league from east to west. This description, taken in connection with that contained in the grant, shows very clearly that it is a grant by metes and bounds, and that consequently no sobrante can result.

The original grant is in evidence, and the genuineness of the signatures of the governor and secretary appearing thereon are duly proved by the deposition of David Spence. Manuel Jimeno proves that the claimant has occupied the land since the year 1833; that he has had a house, cattle, horses, and sowings on it, and that he still lives on it.

The evidence is sufficient to establish the validity of the claim, and entitle it to a confirmation by the board.

Filed in office January 31st, 1854.

GEO. FISHER, *Sec'y.*

100 *Decree.*

JUAN JOSE GONZALES
vs.
THE UNITED STATES. } Case No. 336.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is known by the name of San Antonio or El Pescadero, and is situated in the present county of Santa Cruz, being the same which has been held and occupied by the present claimant since the year 1833 to the present time, and is bounded as follows: beginning at the mouth of the Arroyo de Butario, and running along the sea-coast and bordering thereon to the boundary line of Antonio Buelna, the distance being one league, a little more or less; thence with the line of said Buelna east three-quarters of a league; thence a line southerly parallel with the sea-coast until it intersects the Arroyo del Butario, at the distance of three-quarters of a league from the coast; thence along said arroyo and bordering thereon to its mouth, the place of beginning; the same being in extent three-fourths of a square league, a little more or less. For a more particular description, reference being had to the original grant and map contained in the espediente from the archives now in the custody of the U. S. surveyor general for California, the first of which and a traced copy of the latter are filed in the case.

ALPHEUS FELCH.
THOMPSON CAMPBELL.
R. AUG. THOMPSON.

Filed in office, Jan'y 31st, 1854.

GEO. FISHER, *Sec'y.*

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing forty pages, numbered from 1 to 40, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 336 on the docket of the said board, wherein Juan José Gonzales is the claimant against the United States for the place known by the name of "San Antonio ó el Pescadero."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-third day of September, A. D. 1854, and
101 of the independence of the United States of America the seventy-ninth.

GEO. FISHER, [SEAL.]
Sec'y.

Endorsed: Filed Sept. 23d, 1854.

JNO. A. MONROE, *Clerk.*

Appeal notice.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 30th November, 1854.

JOSE GONZALES
vs.
THE UNITED STATES. } 336.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of August, 1854, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed January 8th, 1855.

JOHN A. MONROE, *Clerk.*

Notice of appeal.

U. S. district court for the northern district of California.

JUAN JOSE GONZALES, apellant,
vs.
THE UNITED STATES. } No. 104.

To Samuel J. Inge, U. S. district attorney for said district:

You are hereby notified that Juan José Gonzales will prosecute a cross-appeal, in the above stated case, for a confirmation of that portion of the claim which was rejected by the U. S. land commissioners for the State of California, a board organized by the act of Congress of March 3d. 1851, in which case the United States has also taken an appeal.

San Francisco, April 18th, 1855.

V. E. HOWARD,
For Plaintiff.

Service of a copy admitted this 19th day of April, 1855.

S. W. INGE,
U. S. District Attorney,
Pr. JOHN A. GODFREY.

Endorsed: Filed April 19th, 1855.

JNO. A. MONROE, *Cl'k.*

102 *Petition.*

United States district court for the northern district of California.

JUAN JOSÉ GONZALES, appellant,
vs.
THE UNITED STATES. } No. 104.

On appeal from the U. S. board of land commissioners for the State of California.

To the honorable Ogden Hoffman, judge of said court:

Juan José Gonzales, the petitioner herein, respectfully represents that, on the 17th day of December, A. D. 1833, José Figueroa, governor of the department of California, and having full power and authority, by law, to make grants of lands belonging to the public domain, made to the petitioner a grant of a certain tract of land situated within the northern district of the State of California, called San Antonio or El Pescadero, bounded by the ranch of Antonio Buelna, the mountain, the coast, and the rivulet Butano, reference being here had for a more particular description to the original grant thereof, and the papers on file in said court.

That on the day of , 1852, this petitioner filed his petition for the confirmation to him of the title to said tract of land in the United States board of land commissioners, organized by the act of Congress approved March 3d, 1851, entitled "An act to ascertain and settle the private land claims in the State of California;" and that thereafter such proceedings were had, that said commission, on the day of , 1854, rendered a decision in the said case, confirming his title to part of the lands embraced within said grant, and rejecting his claim as to a part of said lands; whereupon he appealed from said decision to said United States district court.

The petitioner prays this honorable court to review said decision of the said commissioners, and decide on the validity of his said claim, and for such other and further proceedings as may be just and proper in the premises, and he will ever pray, &c.

V. E. HOWARD,
For Petitioner.

Service of a copy of the within paper, this 19th day of April, 1855, is admitted.

S. W. INGE,
U. S. District Att'y,
Pr. JOHN A. GODFREY.

Endorsed: Filed April 19th, 1855.

J. A. MONROE, *Cl'k.*

103 *Special answer.*

In the district court of the United States for the northern district of California.

THE UNITED STATES, appellees,
vs.
JUAN JOSÉ GONZALES. } No. 104.

The United States, by their attorney, deny the validity of the title set out in the petition of the said appellants for all and any part of the claim therein prayed for, and pray that the decision of the board of commissioners be in all things reversed, and that the said title be decreed to be invalid to all intents and purposes.

Respectfully,

A GLASSEL,
Ass't U. S. Att'y.

Endorsed: Filed October 16th, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Decree.

THE UNITED STATES
vs.
JUAN JOSÉ GONZALES. } No. 104.

Stated term—October 29th, 1855.

Appeal from the final decision of the commissioners to ascertain and settle the private land claims in California.

This cause coming on to be heard at a stated term of this court, on appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved 3d March, 1851, on a transcript of the decision and papers, and proceedings on which said decision was founded, and it appearing that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, whereupon it is ordered, adjudged, and decreed by the court that the said decision be in all things affirmed; and it is further ordered, adjudged, and decreed by the court that the claim of the said Juan José Gonzales is a good and valid claim to the land known by the name of "San Antonio," or "Pescadero," to the extent and within the boundaries mentioned in the grant and map, the original of which former and copy of which latter are on file in the records of this case.

M. HALL McALLISTER,
Judge Cir. Court U. S. Dists. of Cal'a.

Endorsed: Filed October 29th, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

104 *Order granting appeal.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court room in the city of San Francisco, on Thursday, the 19th day of August, in the year of our Lord one thousand eight hundred and fifty-eight—

Present: The honorable Ogden Hoffman, district judge.

JUAN JOSÉ GONZALES
vs.
THE UNITED STATES. } D. C. 104.—L. C. 336.

In this case, on application of V. E. Howard, esq., attorney for claimant, it is ordered by the court that an appeal in behalf of the claimant from the final decision of the court, rendered in said cause at the June, 1855, term, be, and the same is hereby, granted; that the claimant file a bond, with sureties, in the sum of $200, to be approved by the court; that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay, and that the appellants serve the usual citation according to law.

OGDEN HOFFMAN,
District Judge.

Endorsed: Filed August 19, 1858.

W. H. CHEVERS, *Clerk.*

Appeal bond.

District court of the United States for the northern district of California.

JUAN JOSE GONZALES
vs.
THE UNITED STATES. } No. 104.

Know all men by these presents that Wm. B. Dameron and George W. Guthrie, of the State of California, are held and firmly bound to the above-named United States in the sum of two hundred dollars, to be paid to the said United States; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated the nineteenth day of August, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the district court of the United States for the northern district of the State of California:

Now, therefore, the condition of this obligation is such, that
105 if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if they fail to make their appeal

good, then this obligation shall be void; otherwise to remain in full force and virtue.

Witness our hands and seals the day and year above written.

W. B. DAMERON. [SEAL.]
G. W. GUTHRIE. [SEAL.]

Signed and sealed in presence of—
W. H. CHEVERS.

Wm. B. Dameron and George W. Guthrie, parties to the above bond, being duly sworn, each for himself says that he resides in the northern district of California, and that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

W. B. DAMERON.
G. W. GUTHRIE.

Sworn to and subscribed August 19, 1858, before me.

W. H. CHEVERS,
U. S. Commissioner.

SAN FRANCISCO, *August* 19, 1858.

Approved.

OGDEN HOFFMAN,
District Judge.

Endorsed: Filed August 19, 1858.

W. H. CHEVERS, *Clerk.*

Citation.

To the United States of America, by P. Della Torre, esq., U. S. attorney, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington on the first Monday in December next, pursuant to an order of appeal granted on the nineteenth day of August, A. D. 1858, by the district judge of the district court of the United States for the northern district of California, in a certain suit, wherein Juan José Gonzales is plaintiff, and the United States are defendants, on appeal to show cause, if any there be, why the decision in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal, at San Francisco, this nineteenth day of August, in the year of our Lord one thousand eight hundred and fifty-eight.

OGDEN HOFFMAN, [SEAL.]
District Judge.

106 Due service within citation, by United States marshal, admitted this 19th August, 1858.

P. DELLA TORRE,
U. S. Attorney.

Endorsed: Filed August 19, 1858.

W. H. CHEVERS, *Clerk.*

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed and foregoing pages, numbered from one to fifty, both inclusive, contain a full, true, and correct transcript of the record from the board of United States land commissioners, and of the pleadings, decree, orders, citation and bond in said court, filed in this office in the case of Juan José Gonzales, appellants, *vs.* The United States, appellees.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 19th day of August, A. D. 1858, and of the independence of the United States the 83d.

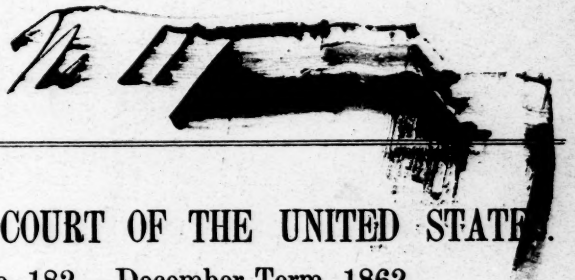
[SEAL.]

W. H. CHEVERS. *Clerk.*

Filed September 17, 1858.

Filed February 10, 1862.

365-



SUPREME COURT OF THE UNITED STATES.

No. 182.—December Term, 1862.

JUAN JOSE GONZALES ET AL., APPELLANTS,

vs.

THE UNITED STATES, APPELLEES.

ARGUMENT FOR THE UNITED STATES.

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SUPREME COURT OF THE UNITED STATES.

No. 182.—December Term, 1862.

JUAN JOSE GONZALES ET AL., APPELLANTS,

vs.

THE UNITED STATES, APPELLEES.

ARGUMENT FOR THE UNITED STATES.

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IN SUPREME COURT OF THE UNITED STATES.

No. 182.—DECEMBER 7, 1862.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

JUAN JOSE GONZALES et al., appellants,
vs.
THE UNITED STATES, appellees.

ARGUMENT FOR THE UNITED STATES.

Two questions were raised in the court below upon the location and survey of the grant in this case.

The first question was raised by the claimant and those holding under him, and related to the *quantity* of the land granted and confirmed. The objection made by them was, that "the survey includes only *three-quarters* of a league of land; whereas it should have included *four leagues* of land." (Printed Record, p. 9, fol. 4; ib., p. 6, fol. 14.)

The second question was raised by Coburn and Clarke, the owners of the adjoining ranch on the south, known as the "Butano Ranch," who intervened for the sake of their interest therein. The question made by them related to the *southern* and *eastern* boundaries of the San Antonio ranch, which necessarily became the *northern* and *western* boundaries of the Butano ranch owned by them. Their intervention, under the act of June 14, 1860, is placed distinctly on that ground: "That said tract, called 'Butano,' adjoins the tract confirmed to Juan Gonzales in this cause on the *south* and *east;* and that whatever lines are finally fixed as the boundary lines of said Gonzales' survey, will become thereby the *northern* and *western* lines of the survey of the said tract called 'Butano,' as the same should finally be fixed. Said Coburn and Clarke ask, therefore, to *intervene* in this cause, and to *become parties thereto.*" (Printed Record, p. 5, fol. 11.) Their right of intervention was recognized by the court, and they thereby became parties to this cause upon their own petition. (Ib., pp. 4, 5, fol. 10.)

The objections filed by them to the survey were these:

"That whereas the title of the claimant was confirmed in said cause to a tract of land *having the form of a rectangular parallelogram,* and having a length of one league from north to south, and a breadth of three-fourths of a league from east to west; yet that the said

survey is of a tract irregular in form, having an extreme length of more than one and a half league, and a *breadth varying from five-eighths of a league to one-eighth.*

"They insist that the *eastern line* of said survey should have been *located parallel to the sea-shore*, and at the distance of three-fourths of a league therefrom, in conformity with the grant, diseño, and order of confirmation in said cause. Also, that the *southern boundary* of said survey should have been a *straight line, extending* from the mouth of the 'Butano' creek *eastwardly*, and *at right angles to said sea-shore*, and so as to conform to said grant, diseño, and order of confirmation." (Printed Record, p. 6, fol. 13.)

Both questions were decided by the court *adversely* to the objectors, by overruling the objections, and approving and confirming the survey. (Ib., p. 30, fol. 74, 75.)

But the only one of them brought into this court by the appeal taken in this case, is that made by the claimant and his assignees. The only appeal taken is by them, and by them only. (Printed Record, pp. 31, 32.)

For the sake of convenience, let us consider them in the *reverse* order.

I. The southern and eastern boundaries of the survey, and the objections of Coburn and Clarke, the intervenors for the Butano ranch.

1. The first position of the government in regard to the intervention of Coburn & Clarke for their interest in the Butano ranch is, that they have *no standing in this court* in this case.

2. The second is, that they are *concluded* by the result of their intervention in regard to the southern and eastern boundaries of the San Antonio ranch, not only in this case, but in the case of the Butano ranch.

As we have already seen, *they intervened*—"*they became parties to this cause*" upon their own petition, and were heard by counsel. The decision upon the questions raised by them was adverse.

By the 5th section of the act of June 14, 1860, (Stat. at Large for 1859–'60, ch. 128, p. 34,) the right of appeal is given to the party or parties interested, to appeal from the order or decree of the district court, made in reference to all surveys removed from the surveyor general's office into the said court, within six months from the date of the decree of the said district court, but not afterwards.

Under the provisions of this section, the intervenors, Coburn and Jeremiah Clarke, had a right, within six months from the date of the decree of the district court, to appeal from the decree of the court in this case; and such has been the *practice* under the act, as may be seen by reference to the Fossatt case, the Mesa case, (in which this same Jeremiah Clarke is an intervenor,) and in other cases. But no such right was exercised by them. The decree was rendered November 29, 1861, and the record shows that no appeal whatever was taken by the intervenors then or since. (Printed Record, pp. 31, 32.) The only appeal taken in the case was taken by the claimant and his assignees. The decision of the district court, therefore, in regard to the *southern* and *eastern* boundaries of the grant in this case, has

become absolute and conclusive upon the intervenors in both cases, so far as depends upon any action of their own.

So far as the government is concerned, it has no interest in disturbing the decisions of the district court in regard to these boundaries. The whole sea-shore line, above and below the San Antonio ranch, is covered by grants; so that, what does not belong to any one, belongs to some other. The government, therefore, has taken no appeal, and is content with the decree of the court below.

The claimant also is satisfied with the decree, provided his claim is to be restricted to three-fourths of a league. (Printed Record, p. 30.)

This result disposes of all questions, therefore, in regard to the *southern* and *eastern* boundaries of this claim, except so far as the *eastern* boundary may be affected by the claim for a greater quantity of land than three-fourths of a league. That is the next question to be considered.

II. The only question remaining, then, is the question whether the claimant is entitled to have surveyed to him a *greater quantity* of land than three-fourths of a league.

That, in view of the record, he is *not* entitled to more than that quantity, is almost too clear to admit of argument. To prove this, it will be sufficient, simply to state the facts as they appear in the record, and in the opinion of the majority of this court, when confirming the claim itself.

1. The claimant petitioned the board of land commissioners for the allowance of his claim to three-fourths of a league, and *no more.* (Printed Record, pp. 33, 34.)

2. The land board, in answer to his petition, confirmed his claim to the extent of three-fourths of a league, by metes and bounds, (reciting them,) "the same being in extent *three-fourths of a league*, a little more or less." (Ib., p. 52.) That confirmation, therefore, was by *quantity mainly;* and by boundaries *incidentally* to the obtainment of that quantity.

3. On appeal from the judgment of the land board, the United States district court affirmed the decision of the land board for three-fourths of a league, and *no more.* "Whereupon," says that court, "it is ordered, adjudged, and decreed by the court, *that the said decision be in all things affirmed;* and it is further ordered, &c., that the claim of the said Juan José Gonzales is a good and valid claim to the land known by the name of 'San Antonio,' or 'Pescardero,' *to the extent* and within the boundaries *mentioned in the grant* and map," &c. (Printed Record, p. 55.)

4. The Supreme Court of the United States *simply reaffirmed* the judgment of the United States district court, "in todidem verbis." The very language of the decree below is quoted in the mandate, and affirmed by this court. (Ib., pp. 1, 2.)

The judgment of this court, therefore, is final and conclusive as to the *quantity* of land granted. In fact, there has been no diversity of opinion between the courts on this point in all the courts through which the claim has passed—the land board, the United States dis-

trict court, and the Supreme Court of the United States. This judgment also is in strict conformity with the original demands of the petitioner himself before the land board. It is rather late in the day, therefore, on the questions arising as to the location and survey of the three-fourths of a league confirmed to the claimant, to attempt to go back and to raise the question whether the grant was for four leagues or three-fourths of a league.

5. It is true the *quasi*-dissenting opinions of Justices Campbell and Nelson, give color to the pretensions of the claimant in this respect; but it is evident that such was *not* the opinion of a majority of the court. (Gonzales *v.* The United States, 22 Howard's U. S. R., 173, 174.)

6. It may be contended that the claimant originally petitioned the *Mexican* government for a grant of four leagues. That is true. But the governor, either by design or by mistake, reduced the quantity to three-fourths of a league. 1. If it was by *design*, the mouth of the claimant is closed forever; and such is the natural inference from the facts. 2. If it was by *mistake*, he *acquiesced* in that mistake, without correction, from 1833 to 1846—13 years; and even so late as 1852, he claimed from the *United States* a recognition of his claim to the extent of the three-fourths of a league only. It is therefore too late to set up such a pretension now against the United States, especially after a change of the sovereignty making the grant.

7. It may also be alleged that the claimant *amended* his petition and claim August 27, 1861. But admitting this to be true, it was *after* the three several judgments confirming the claim—January 31, 1854, by the land board; October 29, 1855, by the United States district court; and January 5, 1861, by the Supreme Court of the United States, at which date its mandate was filed in the court below; and, besides, it was not until after proceedings had been had upon exceptions filed to the survey now under consideration. (Printed Record, pp. 52, 55.) 2. It needs no authority to show that it is *too late* to *amend* a claim *after final judgment thereon.*

This proceeds, however, upon the assumption that an amendment was made or authorized by the court even at that late day. But the *record* shows no such amendment. There is no allusion to the fact, except in the "notes of testimony" taken by the judge, and incorporated into the record, but which form no part of it. (Printed Record, pp. 26, 31, 32.) No motion for leave to make an amendment of the claim, nor any grant of such motion, appears on the record, both of which must have occurred before any legal amendment could have been made.

8. A strong appeal may be made for extending the limits of the grant, on the ground that the present survey *excludes* the *old homestead* from the limits of the grant.

But this fact should have no weight.

1. Because it appears by the testimony that the old homestead has been abandoned, and that there is nothing to mark the spot *but its ruins.* (See testimony of S. W. Smith, Printed Record, p. 17, Quest. and Ans. No. 8 to 12; Healy's map, marked Exhibit A.)

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2. Because it appears by the map of Healy, that the *new residence* of the widow of the claimant *lies within the lines* of the present survey of the three-fourths of a league.

The conclusion of the whole matter, therefore, is that the survey appealed from must be confirmed:

1. Because the intervenors have no standing in court to object, and are *concluded* by the judgment already pronounced.

2. Because the claimant has no right to more than three-fourths of a league of land; and

3. Because, if so, both the claimant and the United States are satisfied with the present survey, and ask for its confirmation.

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